

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV, also)	
known as Jahar Tsarni,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY THIRTY-SEVEN

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Monday, March 23, 2015
9:10 a.m.

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I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>WITNESSES FOR THE GOVERNMENT:</u>				
KEVIN SWINDON (Cont'd)				
By Mr. Chakravarty	7		109	
By Mr. Fick		20		120
MATTHEW LEVITT				
By Mr. Chakravarty	122			

E X H I B I T S

<u>GOVERNMENT'S EXHIBIT</u>	<u>DESCRIPTION</u>	<u>FOR ID</u>	<u>RECEIVED</u>
1385-1389 1393, 1395	Mobilsync backup data		9
1153	Extracted text messages from Kadyrbayev phone		11
1438	Selected file listing from 1R6		20

P R O C E E D I N G S

THE COURT: Morning.

MR. CHAKRAVARTY: Your Honor, Agent Swindon is still on the stand. I have a few minutes left with him just to clarify some things, and then I would hand him over for cross-examination. My understanding there's anticipated to be a lengthy cross-examination of this witness. And the next witness is Dr. Levitt, who is our terrorism expert. He has a flight to Europe scheduled for this afternoon after the court day. And so our hope was that we would get all of his testimony in.

In light of the prospect of Mr. Swindon potentially going longer than expected, if the Court has no objection, I'd like to potentially call Mr. Levitt out of order -- Dr. Levitt out of order and then conclude Agent Swindon's.

THE COURT: Mr. Bruck?

MR. BRUCK: That's fine with us, your Honor. I should note, however, that there is a motion in limine respecting the terrorism experts, of which Dr. Levitt is one. And his report is specifically referenced in that motion. So that will have to be addressed before his testimony.

THE COURT: Well, I've reviewed his report, and I think he can testify. So as to him, it's denied. The motion is denied as to him. I've reviewed the report and the motion. The motion was addressed to a number of people, and I take no

1 position whether it applies to others or not -- whether this
2 ruling applies to others or not. As to him, he may testify.

3 MR. BRUCK: That leaves me, I guess, with the question
4 about the extent to which I will have to continually object
5 during the course of his testimony on the grounds stated in the
6 motion in limine or whether we can have a continuing objection
7 to the background information.

8 THE COURT: Yes, you may have a continuing objection
9 to it.

00:01 10 MR. BRUCK: Thank you very much.

11 THE COURT: How long will the Levitt testimony be?

12 MR. CHAKRAVARTY: I anticipate -- it's my anticipation
13 so it might be generous -- about an hour and a half on direct,
14 your Honor.

15 THE COURT: On direct?

16 MR. CHAKRAVARTY: On direct.

17 THE COURT: And how much on cross?

18 MR. BRUCK: Considerably less than that, your Honor.

19 THE COURT: Well -- so who's doing the cross of this
00:02 20 witness?

21 MR. FICK: I am, your Honor.

22 THE COURT: And your estimate?

23 MR. FICK: Possibly a couple of hours.

24 THE COURT: Yeah. Well, why don't we proceed -- well,
25 there's two ways of doing it, I guess. You can finish the

1 direct, and we can go to Levitt and get him done and then have
2 the cross uninterrupted, or you can have some cross and we'll
3 see how the clock goes.

4 MR. BRUCK: As far as Levitt goes, I don't think
5 there's any danger, that if we proceed in the normal order,
6 that he wouldn't be finished by 4:00 at least based on --

7 THE COURT: Okay. All right. Let's see how the
8 morning goes then in the normal order.

9 MR. FICK: So we can proceed --

00:02 10 THE COURT: So you'll begin with cross after the
11 direct; is that all right?

12 MR. FICK: Yeah. I'm going to have my consultant come
13 to the table.

14 THE COURT: Fine. Any other issues before we get the
15 jury? So why don't you line them up. It takes awhile usually.

16 Miss Conrad filed a motion under seal this morning.

17 MS. CONRAD: Yes, your Honor.

18 THE COURT: That matter has to be addressed to the
19 presiding judge in the other case.

00:03 20 MS. CONRAD: Okay. Thank you.

21 THE COURT: As a preliminary matter.

22 MS. CONRAD: Okay. Thank you.

23 THE COURT: It may then be appropriate depending on
24 the ruling, okay?

25 MS. CONRAD: Yes.

1 (The jury entered the courtroom at 9:13 a.m.)

2 THE COURT: Morning, jurors. I hope you had a good
3 weekend, and I hope you abided by my instructions not to
4 discuss the case. Did you?

5 THE JURY: Yes.

6 THE COURT: Thank you. We'll resume with the direct
7 examination of Agent Swindon.

8 MR. CHAKRAVARTY: Thank you, your Honor.

9 CONTINUED DIRECT EXAMINATION BY MR. CHAKRAVARTY:

00:04 10 Q. Good morning, Agent Swindon.

11 A. Good morning.

12 Q. I just wanted to clarify a few things before I hand you
13 over for cross-examination.

14 We had talked on Thursday about some of the items that you
15 had found on the Sony VAIO laptop, what you called the 1R6,
16 Exhibit 1142. Do you remember that?

17 A. Yes.

18 Q. Was one of those items a folder that was marked as a
19 Mobilsync backup?

00:04 20 A. There was a file named Mobilsync backup.

21 Q. Can you just explain again what that was?

22 A. The Mobilsync backup is a backup of the iPhone or an Apple
23 device that would be stored on the computer if you backed it
24 up.

25 Q. And what kinds of data were stored in the Mobilsync

1 backup?

2 A. The Mobilsync backup has a standard set of things it
3 attempts to try and store but not always successful. Typically
4 it would be contacts, text messages, the actual ID of the
5 phone, of the SIM card ID on the phone, and maybe images and
6 other data that would be on the phone.

7 Q. And so on the -- on that device, did you locate several
8 text messages that were then exported and you verified that
9 those did appear, in fact, on the Sony VAIO computer?

00:05 10 A. The text messages were in the Mobilsync backup data that
11 was exported.

12 Q. Specifically, were there Exhibits No. 1385 through 1389,
13 1393, and 1395? Would it help to put them up on the screen?

14 A. It would, yes.

15 MR. CHAKRAVARTY: Your Honor, for the witness, please.

16 Q. So this is 1385, 1386, 1387, 1388, 1389, 1393, and 1395.
17 Do you recognize those as being text messages that were
18 exported from the Sony VAIO laptop along with a redaction of
19 the identifying information of the counterparty to a
00:07 20 conversation?

21 A. Yes. Those messages were located in Mobilsync backup data
22 from the 1R6.

23 MR. CHAKRAVARTY: I'd move into evidence 1385 through
24 1389, 1393, and 1395.

25 MR. FICK: Same objection to the extent these are

1 derivatives compiled by somebody else.

2 THE COURT: All right. Overruled. Admitted.

3 (Government Exhibit Nos. 1385-1389, 1393, 1395 received into
4 evidence.)

5 Q. With regards to this Mobilsync backup, I had asked you a
6 little bit on Thursday with regards to whether you were able to
7 identify which phone actually produced those text messages. I
8 should say which phone had synced with the laptop that resulted
9 in those text messages going over to the laptop. Were you able
00:07 10 to determine that?

11 A. Yes. With the exception of 1385, the messages were
12 included in the iPhone 5 backup.

13 Q. I'm sorry. 1385, was that a different iPhone?

14 A. Yes. That came from the iPhone 3. That was another
15 Mobilsync backup that was on the device.

16 Q. Thank you for clarifying that.

17 For the remainder, which phone were you able to attribute
18 those to?

19 A. All but 1385?

00:08 20 Q. All but 1385.

21 A. Yes. The iPhone 5.

22 Q. And that's --

23 MR. CHAKRAVARTY: I think this is in evidence. Your
24 Honor, if I could have this published?

25 THE COURT: Displayed?

1 MR. CHAKRAVARTY: Yes, please.

2 Q. This is what's marked 1411, also on the 1R6 device. Was
3 there an ICC ID number on this?

4 A. Yes.

5 Q. Were you able to match that up with an ICC ID number
6 somewhere else in the investigation?

7 A. Yes, from the iPhone 5 on -- I believe it's 2W1.

8 Q. Moving over to --

9 A. I'm sorry.

00:09 10 Q. 2W2?

11 A. 2W2, I'm sorry.

12 Q. Were you able to read the SIM card, and is that the same
13 number?

14 A. Yes.

15 Q. I just pulled up on the screen 1151-16, which is a
16 photograph of the SIM card that you looked at on Thursday, is
17 that right?

18 A. Yes.

19 Q. In addition, I had asked you on Thursday whether there
00:09 20 were some text messages that were extracted from an iPhone of
21 Dias Kadyrbayev. Do you recall that?

22 A. I do, yes.

23 Q. Over the weekend, were we able to redact a version of
24 those text messages?

25 A. Yes.

1 MR. CHAKRAVARTY: And I'd move into evidence Exhibit
2 1153, which is the redacted version.

3 MR. FICK: Still the confrontation and foundation
4 objection.

5 THE COURT: All right. Subject to that objection,
6 overruled. Admitted.

7 (Exhibit No. 1153 received into evidence.)

8 MR. CHAKRAVARTY: Call up 1153 on Sanction, please.

9 THE COURT: Publish?

00:10 10 MR. CHAKRAVARTY: Yes, please. Thank you.

11 Q. Agent Swindon, are these text messages that were from
12 April 18, 2013, from Dias Kadyrbayev's phone between Dias and
13 the person listed as Jahar, with a phone number 857-247-5112?

14 A. These messages were present on that phone, yes.

15 Q. The text box on the right, does it say, "I saw the news"?
16 "Better not text me, my friend." And then --

17 A. Yes.

18 Q. And then does that same user say, "If you want, you can go
19 to my room and take what's there, Smiley face, Bro, salaam
00:11 20 alaikum"?

21 A. Yes.

22 Q. Now, I wanted to clarify --

23 MR. CHAKRAVARTY: Thank you, Mr. Bruemmer.

24 Q. I wanted to clarify a few points about a couple of the
25 devices, the external hard drive devices. There was one that

1 was found in Watertown, on Laurel Street, that we've introduced
2 as Exhibit 1475. Do you recall that?

3 A. Yes. Can you bring up the original exhibit that had the
4 list, please?

5 Q. Sure. You want the list, the spreadsheet?

6 A. Yes, please.

7 Q. So we were talking about the 1W16, is that right?

8 A. Yes, sir.

9 Q. And were there certain files that were -- appeared to be
00:12 10 scanned versions of Russian textbooks on this hard drive?

11 A. There were files on that 1W16 that were in a format --
12 that were recovered in a format called DjVu. DjVu is a
13 proprietary format, similar to, like, a PDF file or an Adobe
14 PDF, although not widely used anymore. Those files were
15 converted from DjVu to PDFs for trial purposes or exhibit
16 purposes.

17 Q. And so moving into that hard drive, is this an example of
18 the fact that those are now PDFs so that they can be opened in
19 front of the jury?

00:13 20 A. Yes.

21 Q. On that same hard drive, I think you mentioned on Thursday
22 that there was a file that appeared to be a document which was
23 a homework assignment of somebody that -- named Giovanni
24 Norgill. Was that in the active directory of the computer hard
25 drive, or where did you locate that?

1 A. Could you go back one, please?

2 Q. Sure.

3 A. Thank you. Yeah, the 1475-03 was a carved/recovered file
4 from a previous directory structure that existed on the hard
5 drive.

6 MR. FICK: Your Honor, I'd just ask the exhibit be
7 modified at a convenient time to conform to the format of the
8 other exhibits where carved files were stored separately so as
9 not to mislead anybody.

00:14 10 THE COURT: I'm not sure I followed that. They're
11 organized --

12 MR. FICK: The exhibits have largely been organized to
13 sort of show the location of the files the way they were on the
14 active device. Where there were carved files on most of the
15 other exhibits, those were put in a separate folder so no one
16 is confused about whether they were there or whether they were
17 deleted and recovered.

18 MR. CHAKRAVARTY: I don't have a problem with that,
19 your Honor.

00:14 20 THE COURT: Okay.

21 Q. Now, these DjVu files -- DjVu is just a -- is that a
22 software tool?

23 A. It's a file format that they would be put into.

24 Q. Were there also DjVu files found on the thumb drive that
25 was found in the landfill that you've called L14 and we've

1 marked as 1150?

2 A. Could you go back to the spreadsheet, please? Yes.

3 Q. And with regards to those DjVu files, were those also
4 converted to PDF?

5 A. Those were also converted to PDF.

6 Q. Were some of those DjVu files actually corrupted, and you
7 weren't able to access them?

8 A. I believe that four of those files were corrupted and
9 unable to be accessed.

00:15 10 Q. To refresh your memory, was it Files No. 26, 27, 28, and
11 33 that were corrupted?

12 A. Yes, it was.

13 Q. For purposes of trial presentation, were those replaced
14 with intact versions of those PDFs from another device?

15 A. The disks that I was asked to review had an intact version
16 of that file on it.

17 Q. But it wasn't intact when you found it?

18 A. It was not.

19 MR. FICK: Again, I'd ask the exhibit then be modified
00:15 20 to conform to what was actually there.

21 MR. CHAKRAVARTY: Again, no objection, your Honor.

22 THE COURT: Okay.

23 Q. Now, the names of carved files, you explained what carving
24 is. I'm not going to ask you to rehash what that is. But what
25 did the names of carved files appear as when they're carved out

1 of this unallocated space?

2 A. In the application software, it doesn't -- it's not coming
3 out of a directory so it doesn't have the name of the file,
4 although it might be able to carve that file out of the
5 unallocated space. It has to find some way of accessing it in
6 the application software. So it starts a numerical numbering
7 system unique to that carved file.

8 Q. What is the name when your software exports a carved -- a
9 series of 1's and 0's that software recognizes to be a file,
00:16 10 what does it name that file?

11 A. It would be a sequential number that was generated by the
12 application software.

13 Q. Again, for trial presentation purposes, where there was no
14 name on the file itself, or no decipherable name on the file
15 itself, but there was in the document, were any of the
16 documents' titles changed in order to reflect the content?

17 A. The carved file titles were changed to reflect the
18 content, yes.

19 MR. FICK: Same request to correct the exhibit.

00:17 20 THE COURT: Okay. All right.

21 Q. Now, sticking with this thumb drive that was found in the
22 landfill, were you able to determine whether that thumb drive
23 had ever been plugged into the Sony VAIO laptop computer, 1R6,
24 Exhibit 1142?

25 A. Yes, we were.

1 Q. How were you able to do that?

2 A. Again, from Thursday, the registry file which is
3 associated with every Windows computer collects and stores
4 information of devices that were installed into that -- into
5 that computer. And there was an entry in that registry that
6 showed the serial number from that thumb drive in the registry
7 file.

8 Q. If I may ask to publish Exhibit 1142-02, does this show a
9 Kingston thumb drive being plugged into the 1R6 computer from
00:18 10 the registry information?

11 A. This information was extracted from a link file, and it
12 shows the volume serial number which is unique to the Kingston
13 thumb drive -- or this particular Kingston thumb drive.

14 Q. You checked the registry to match up that Kingston thumb
15 drive to the one that was found in the landfill?

16 A. Yes.

17 Q. We had talked a little bit about Tamerlan's computer, the
18 D385 that was found in Laurel Street in Watertown; do you
19 remember that?

00:18 20 A. We did, yes.

21 Q. You didn't do the same extraction of files or verification
22 of files that were on that computer, did you?

23 A. We did not.

24 Q. Did you find files of a similar nature on that computer as
25 those that you talked about?

1 A. There was a cursory look of that computer done, and there
2 were numerous files that were of the same title.

3 Q. Was there anything unique about how Tamerlan's computer
4 was set up?

5 A. One unique thing is that on D385 had a TrueCrypt volume on
6 the drive. And TrueCrypt is an encryption software. It's
7 readily available and it's actually freeware. You can
8 download, and it will allow you to be able to encrypt a file, a
9 folder or a drive -- or a volume, I'm sorry.

00:19 10 Q. When you say "encrypt," what does that mean generally?

11 A. Encrypt would be to change it from cleartext, which is
12 readable, to a ciphertext, which would be unreadable to anybody
13 who didn't have the password to decrypt it.

14 Q. That's another type of password protection?

15 A. It would be more data protection than password protection.

16 Q. Finally, I asked you about some of the commonalities of
17 files across some of the devices on Thursday.

18 MR. CHAKRAVARTY: Can we call up Exhibit 1438 just for
19 the witness?

00:20 20 Q. Do you recognize this chart?

21 A. I do, yes.

22 Q. What is it?

23 A. This is an MD5 hash analysis, as we talked about on
24 Thursday, which is the sort of fingerprint for the file. And
25 this is an analysis of files that are common across 1R6, 1437,

1 14-6, and 3R5.

2 Q. So those are four devices that you talked about on
3 Thursday?

4 A. Yes.

5 Q. And would this chart help you explain some of the
6 propagation of those files across those devices to the jury?

7 MR. FICK: Objection to the form of the question.

8 THE COURT: Overruled. You may answer.

9 A. Yes.

00:21 10 MR. CHAKRAVARTY: Your Honor, I'd mark this as a
11 chalk, please, and ask to publish.

12 THE COURT: Okay.

13 Q. Agent Swindon, is this a selected file listing from the
14 1R6 Sony VAIO laptop, 1142?

15 A. Yes, it is.

16 Q. And are these some of the audio files from that computer
17 that we can see from the MP3 file type?

18 A. Yes.

19 Q. Did you see these across various devices?

00:21 20 A. We did.

21 Q. Moving on in the same chart, did you see the same files on
22 the iPod Nano labeled "Jahar"?

23 A. Yes.

24 Q. How did you determine that they were the same files?

25 A. Not only do the -- in most cases, the title of the files

1 match but the MD5 hash value matches.

2 Q. And the MD5 hash value you described as the fingerprint
3 for each file?

4 A. Yes.

5 Q. And did you find the same files on the iPod Shuffle that
6 was found in Watertown that was labeled "MP3 play"?

7 A. Yes.

8 Q. Again, was it through the same MD5 hash value analysis?

9 A. Yes.

00:22 10 Q. And the 3R5, which was the Samsung Finesse phone that was
11 found in the dormitory room at UMass Dartmouth, did you find
12 those same files?

13 A. Yes.

14 Q. And so does this table indicate the common files that --
15 those common files that you just mentioned that were on all
16 four of those devices?

17 A. Those particular files, yes.

18 MR. CHAKRAVARTY: Your Honor, I think foundation has
19 been met to move to introduce this as evidence under 1006, your
00:23 20 Honor, so I would so move.

21 MR. FICK: I'd object to the word -- the title of the
22 file because it suggests a direction of the movement has not
23 been established.

24 THE COURT: Overruled. I'll admit it as an exhibit.
25 What's its number?

1 MR. CHAKRAVARTY: 1438.

2 THE COURT: Okay.

3 (Exhibit No. 1438 received into evidence.)

4 MR. CHAKRAVARTY: Those are all the questions I have
5 for Agent Swindon at this time, your Honor.

6 MR. FICK: Just a moment to set up.

7 CROSS-EXAMINATION BY MR. FICK:

8 Q. Good morning, Agent Swindon.

9 A. Good morning.

00:24 10 Q. My name is Bill Fick. I'm one of Mr. Tsarnaev's
11 attorneys.

12 You spent a good part of your testimony, both today and
13 last week, talking about Exhibit 1142, which are the collection
14 of files from the Sony VAIO, right?

15 A. Yes.

16 Q. And at one point last week when you were talking about
17 that exhibit, you said -- and I think -- I'm quoting, "This was
18 a representative sample that was given to us to verify." Do
19 you remember saying that?

00:25 20 A. Yes.

21 Q. And that actually wasn't an accurate statement, right,
22 because there's nothing representative at all about what's on
23 1142, fair to say?

24 A. That was a sample of what was on 1142.

25 Q. A sample selected by the investigative team at the FBI,

1 right?

2 A. By the investigative team.

3 Q. So it's not representative in some proportional way of
4 what was on the Sony, right?

5 A. There were hundreds of thousands of files on the Sony 1R6.

6 Q. Just to make it a little more concrete, there was a lot of
7 Mr. Tsarnaev's homework on the Sony, right?

8 A. I would have to confirm it by looking at it, but I wasn't
9 asked to verify that there was particular homework assignments
00:25 10 on it.

11 Q. There was one homework assignment among the exhibits that
12 you talked about, right? And that was an assignment about
13 drones from high school; do you remember that?

14 A. If you could pull it up for me, sure.

15 Q. Just to go backwards, you recognize this as being Exhibit
16 1142, right? Going inside the Sony laptop, going to public,
17 and the first document there is the assignment about drones
18 that I believe you talked about, is that right?

19 A. I verified that 147 existed on that computer, yes.

00:26 20 Q. You're aware that there were other homework assignments on
21 the computer right? You looked at the computer, and this was
22 one file that was selected for you to make sure was there?

23 A. There was numerous documents and files on that computer.

24 Q. And the Exhibit 1142 that you talked about also included a
25 selection of audio files, music, right? The nasheeds we've

1 been talking about that you verified?

2 A. Yeah. There were nasheed files on that computer, yes.

3 Q. That was a selection that the investigative team gave you
4 that you then verified were there, right?

5 A. Yes.

6 Q. And we're talking about -- it was a couple dozen files,
7 something like that, that you talked about?

8 A. I'd have to see the exact number, but I don't have that in
9 front of me.

00:27 10 Q. All right. Well, we can do that again.

11 THE COURT: Mr. Fick, I'm not clear whether you want
12 this just for the witness or for the witness and the jury.

13 MR. FICK: I'm going through stuff that's in evidence,
14 your Honor, so I would leave it on the screen if that's okay.

15 THE COURT: Okay.

16 MR. FICK: Thank you.

17 Q. Well, whatever the number was, the bottom line is there
18 was a group of files that were on the disk that we talked about
19 -- that you talked about last week that you verified, right?

00:28 20 A. There were files that I was asked to verify existed on
21 that computer, yes.

22 Q. And it was a small collection of the over 400 MP3 audio
23 files that were on that computer, right?

24 A. I don't know the exact number of MP3 files on the
25 computer.

1 Q. When you were in the process of verifying the files, you
2 looked at the 4,000-or-so-page long list of everything on the
3 computer, right?

4 A. We did a comparison, yes.

5 Q. So you have noticed, in looking at that list, there were
6 many hundreds of audio files on the computer, correct?

7 A. Again, I don't know how many MP3 files were on that
8 computer in total.

9 Q. Are you willing to even estimate that we're talking many
00:29 10 hundreds of files?

11 A. Not without the time to be able to analyze the data.

12 Q. Well, in any event, in addition to the nasheeds that you
13 talked about in your testimony --

14 MR. FICK: If I can get my screen back here.

15 Q. -- there were -- there was pop music on the computer,
16 right? Did you happen to notice that when you were looking at
17 the audio files?

18 A. I would only recognize them by the titles of the MP3s when
19 I was looking through and verifying the ones I was asked to
00:30 20 verify. I did not listen to the actual MP3 files. We weren't
21 asked to verify.

22 Q. Fair to say you recognized a large number of pop music
23 audio titles in verifying the MP3 files on the computer,
24 correct?

25 A. There were a few titles there that I would recognize, yes.

1 Q. Just by way of example, I'm going to pull up a screenshot
2 of Page 2126 of Exhibit 1142-152. And, for example, the title
3 we've heard other times in this trial is on this computer,
4 Jay-Z, *Ain't No Love in the Heart of the City*; do you see that?

5 A. I do see that. 1142, is that the actual exhibit that I'm
6 looking at?

7 Q. Yes. You're looking at Page 2126 from Exhibit 1142-151.
8 Do you see that?

9 A. If that's the complete file listing from 1142, then, yes.

00:30 10 Q. And that's the complete file listing or something like it
11 that you used to go through and verify whether various files
12 were on the computer, correct?

13 A. That is one of the techniques that we used, yes.

14 Q. And the total number of exhibits -- sub-exhibits numbered
15 on 1142, I think the highest number is 151 or something like
16 that, is that right?

17 A. I would have to see it, sir.

18 Q. Okay. We'll pull it up again. 1142-151, that's the sort
19 of last document there. That's the giant file listing we were
00:31 20 just looking at, right?

21 A. I believe that's the last file -- the last exhibit from
22 that piece of evidence, yes.

23 Q. 151 sub-exhibits from this computer out of a half a
24 million files, is that right?

25 A. That would be fair to say, yes.

1 Q. So we're talking about something like
2 three-ten-thousandths of one percent of the files from that
3 computer, right?

4 A. I don't think it's realistic that we looked at every
5 single solitary file on that computer to show here in court.

6 Q. I'm not asking you if you looked at every single solitary
7 file. I'm just asking whether the selection that the
8 investigative team included on this disk is a flyspeck compared
9 to 500,000?

00:32 10 A. I'm not sure what the definition of a flyspeck is, but if
11 you'd want to go back to the percentage, we could do the math,
12 I guess.

13 Q. Who selected what files were going to go on this disk?
14 You said it wasn't you.

15 A. There was an investigative team which was made up of
16 investigative analysts, case agents, prosecutors, forensic
17 specialists. And that's primarily members of the investigative
18 team.

19 Q. Can we put some names on that? Do you know who actually
00:32 20 made the choice?

21 MR. CHAKRAVARTY: Objection, your Honor. It's asking
22 him to speculate.

23 THE COURT: No. You may answer if you know.

24 A. I don't know who actually selected every single individual
25 one of these files. I do not.

1 Q. So do you believe it was different people that did it,
2 multiple people that did it?

3 A. There were multiple analysts that were working on this
4 investigation, yes.

5 Q. Who sort of provided you with the finished package? Who
6 tasked you with, Here's a list? Check and see if they are
7 there?

8 A. That was a combination of the senior investigative
9 analyst, the case agents, and the prosecutors.

00:33 10 Q. So who's the senior investigative analyst?

11 A. John Petrozelli.

12 Q. And him and a collection of case agents and the
13 prosecutors together, in some ceremonial forum, gave you the
14 disks altogether?

15 A. Well, it wasn't very ceremonious. It was, Here's a stack
16 of CDs, and I need you to verify and validate that there's
17 information on these CDs.

18 Q. Bottom line is you're not the one who selected them?

19 A. I did not select them, no.

00:33 20 Q. Okay. Now, what about the various spreadsheets that are
21 in each of these exhibit files, the various -- these derivative
22 exhibits you talked about, the spreadsheets of internet history
23 selections, et cetera? Who made those?

24 A. The investigative team also made those.

25 Q. So as to any individual spreadsheet, can you say who in

1 particular actually made it?

2 A. Not every single one, no.

3 Q. For any of them, do you know who made them?

4 A. I do, yes; several, I do.

5 Q. For example, can you just tell me one of the ones on the
6 screen here and tell --

7 A. If you'd like to pick one, I could certainly --

8 Q. Yes, please.

9 A. Which number?

00:34 10 Q. Well, no. You said you only knew some of them. So pick
11 one that you know who made it and tell me.

12 A. Could you make the screen a little bigger, please, so I
13 can see the complete names of the file list?

14 So the selected internet -- the selected internet activity
15 or 001.

16 Q. Yes.

17 A. Yes, sir.

18 Q. Who made that one then?

19 A. That was John Petrozelli.

00:34 20 Q. When you went through to verify the materials on these
21 disks, did you verify each of the spreadsheets for accuracy as
22 well?

23 A. I went over the spreadsheets with Mr. Petrozelli, and we
24 accessed the Internet Evidence Finder data and compared the
25 two, yes.

1 Q. So did you compare them line by line?

2 A. We went line by line with the results from his Internet
3 Evidence Finder search.

4 Q. Now, what about exhibits that aren't from internet
5 evidence, exhibits that are fileless from the computer, did you
6 verify those line by line?

7 A. The file list for the computers are generated by the
8 forensic software, which they're approved tools. Previous to
9 us using the tool, that file listing is an accepted practice
00:35 10 within the SOPs of the guidelines.

11 Q. I understand, for example, that -- correct me if I'm wrong
12 -- something like Exhibit 151, the massive 4,000-page list,
13 that's generated by a computer or software, right?

14 A. That's generated -- actually, the name is in the title.
15 It's generated by a product called X-Ways Forensics.

16 Q. But the other exhibits, the sort of subsets, the
17 derivative samples, the extractions of a limited number of
18 files, that's done by some human being, right? If you just
19 take, for example -- let me just ask the question more
00:36 20 generally. There's the 4,000-page list of all the files in the
21 computer, right?

22 A. Yes, sir.

23 Q. There were various other spreadsheets with lesser lists of
24 certain files that the FBI determined were relevant to the
25 investigation you should talk about, right?

1 A. You mean lesser directory listing files?

2 Q. Lists, sublists of the big one. They contain a smaller
3 number of files in the list.

4 A. There are derivative lists that have been entered in as
5 evidence that were sublists of other information or have been
6 gotten from the computer.

7 Q. For example, 1142-13, right, these are various selected
8 user files from the Sony laptop, right?

9 A. Yes.

00:37 10 Q. And this is a five-page spreadsheet as opposed to 4,000
11 pages, right?

12 A. Yes.

13 Q. So some human being picked some of the files on the
14 4,000-page list and included them on the smaller five-page
15 list, right?

16 A. Yes.

17 Q. Okay. As to such spreadsheets, the smaller lists, the
18 sublists, did you go through each of those and verify that each
19 of the actual entries, the files and the dates and times
00:37 20 associated with them, were actually on the master list?

21 A. These were generated from the master list.

22 Q. They were generated from the master list in the form of
23 somebody cuts and pastes different entries, right?

24 A. Again, I'm not sure the process, whether they were
25 hand-typed or cut and pasted, but these were generated from

1 information that was from the main directory listing in the
2 case.

3 Q. Okay. Did you go through them line by line and make sure
4 there was no error in the moving from here to there, as a
5 general matter, for all of these spreadsheets?

6 A. Well, I verified that the information included in these
7 spreadsheets is included in the master directory listing.

8 Q. My question is a little bit different. I'm talking about
9 did you go through line by line and make sure nothing
00:38 10 extraneous got in there, nothing fell out that should be there?

11 A. I verified that the information that is in the
12 spreadsheets that were generated from the master directory list
13 was in the master directory list.

14 Q. Did you do that on a line-by-line basis?

15 A. For each of these?

16 Q. For each of the spreadsheets that you've talked about
17 here.

18 A. Yes.

19 Q. Every single one?

00:38 20 A. Every single one, from every single piece of evidence or
21 every single one from 1150 -- I mean 1142?

22 Q. Speaking generally now about the collection of exhibits
23 that was put into evidence through you last week, each of those
24 disks has a number of derivative spreadsheets on them, fair to
25 say?

1 A. They have a number of different types of spreadsheets,
2 yes.

3 Q. Among those spreadsheets on each of them is a derivative
4 spreadsheet, a selected file list from each of the devices,
5 right?

6 A. Not every single one.

7 Q. Let me try and ask the question a little bit more
8 specifically then. As to Exhibit 1142-13, the selected file
9 list off of the Sony, did you review that spreadsheet line by
00:39 10 line to make sure it was all accurate?

11 A. I did.

12 Q. Okay. And did you do the same thing for all of the other
13 like spreadsheets that are derivative file lists in the other
14 exhibits?

15 A. Right. But there are a number of different types of
16 spreadsheets that are in each of the different types of
17 evidence, so there may have been different techniques used.

18 Q. Okay. As a general matter, for whatever the technique
19 was, did you verify each spreadsheet line by line?

00:39 20 A. Not general but specifically, yes.

21 Q. Now, you are a supervisory special agent, right?

22 A. I am, yes.

23 Q. And you're both an agent and a certified computer analyst,
24 right?

25 A. Certified computer analyst? I'm not sure what that means.

1 Q. Well, you talked about the various kinds of training and
2 certification you have in computer forensics, right?

3 A. Prior to being a supervisor, I was a certified forensic
4 examiner, yes.

5 Q. And so you have training as both sort of the standard FBI
6 agent training, and you have additional specializations in
7 computer forensics, fair to say?

8 A. Yes.

9 Q. And you are the supervisor in Boston for both the Cyber
00:40 10 National Security Squad and for the CART team; as I understood
11 it, correct?

12 A. Yes. The CART program comes under my supervision.

13 Q. And remind us again what CART stands for.

14 A. It's the Computer Analysis Response Team.

15 Q. And so the people you supervised did a lot of work
16 collecting, processing and analyzing the hundreds of pieces of
17 digital evidence that were collected in this case, right?

18 A. Yeah, people that I directly supervise and then people
19 from other field offices also, yes.

00:40 20 Q. But you are the CART supervisor in Boston, right?

21 A. I am the supervisor for the CART program in Boston, yes.

22 Q. And the various items, if we pull up, for example, the
23 little exhibit, the chalk, that Mr. Chakravarty talked about
24 with you a fair amount -- I believe it was marked as 1557. In
25 general, the items that you've been talking about were all

1 processed at either Black Falcon or Center Plaza here, right?

2 A. Or Quantico, yes.

3 Q. Or Quantico, a few of them down at the bottom. But a
4 large number of them at Black Falcon and Quantico, right?

5 A. Center --

6 Q. I'm sorry, Black Falcon and Center Plaza, right?

7 A. Yes.

8 Q. Those are the -- these -- that's where the CART people
9 worked that you supervise, right?

00:41 10 A. Not permanently. They work in Center Plaza. Black Falcon
11 was the --

12 Q. It was temporary?

13 A. Yes.

14 Q. But you supervise CART in Boston; that's the bottom line?

15 A. Yes.

16 Q. Now, so you then had an oversight role in the activities
17 of analyzing the data from the devices collected in the Boston
18 Marathon investigation, right?

19 A. A -- I had an oversight role of the individuals or the
00:42 20 people that were responsible, yes.

21 Q. As time went on, as a supervisor, you reviewed their work
22 product from time to time, right?

23 A. We do periodic file reviews of what's assigned to
24 individual examiners, but I don't micro what they're working on
25 in any one given time.

1 Q. But you're certainly aware of what the people under your
2 supervision are doing, right?

3 A. Yes.

4 Q. And you discuss issues that may come up from time to time,
5 right?

6 A. Technical issues or personnel issues?

7 Q. Issues related to the work that they are doing on the
8 investigation.

9 A. Yes.

00:42 10 Q. So you have an awareness of the investigation of digital
11 evidence related to the Boston Marathon bombing?

12 A. Yes.

13 Q. Pretty big investigation in your career, I take it, right,
14 in terms of scope and complexity?

15 A. One of them, yes. I mean, it's not -- it's the same
16 proportion as 911 or several others that I've been involved in,
17 yes.

18 Q. Big, big operation?

19 A. Yes.

00:43 20 Q. I think you testified that the FBI has a very standardized
21 process for acquiring and processing digital evidence, right?

22 A. The certification process has -- yes, has -- to become a
23 certified examiner, there is a standard process, yes.

24 Q. The process of actually doing the investigation, taking
25 the device, imaging it, processing it, that's all very

1 standardized also, isn't it?

2 A. Yes.

3 Q. It's important to document that process, too, at each step
4 of the way, to record what has happened and who did it, right?

5 A. It's different for different devices, and each examiner is
6 -- has their sort of own way of doing it.

7 Q. Well, there's a standard chain of custody, for example,
8 that the FBI maintains for electronic evidence in these kinds
9 of investigations, right?

00:44 10 A. Yes.

11 Q. So that keeps track of a device gets imaged, right?

12 That's part of what happens here. There's a recording of the
13 fact of the device being imaged, right?

14 A. Well, the chain of custody is for the handling of
15 evidence, not --

16 Q. Right.

17 A. Not the process of the imaging or the processing.

18 Q. When a piece of evidence comes in and is imaged, that fact
19 is recorded as part of the chain of custody, right?

00:44 20 A. No.

21 Q. It's not?

22 A. It is not.

23 Q. Is there any other form in which the various steps taken
24 by the various people along the way in processing a piece of
25 digital evidence are recorded?

1 A. It would be in a final report.

2 Q. So there's no sort of ongoing, something -- there's
3 nothing analogous to a chain of custody for each step in the
4 process for a forensic investigation?

5 A. There is not, no.

6 Q. So, for example, going back now, we couldn't retrace the
7 steps of who did what from the moment of collecting the Sony
8 laptop through the present? We couldn't retrace that in a
9 paper trail?

00:45 10 A. Well, we could, sure.

11 Q. Using what then if there's no chain of custody that
12 records that?

13 A. There's the chain of custody for the actual piece of
14 evidence. We could show you who had custody of that piece of
15 evidence. Then, typically, in the notes that you'll see --
16 that we saw that we included in 1R6, you can see the name of
17 the person who would have imaged it.

18 Q. What about somebody who then processed the image, is that
19 recorded somewhere?

00:45 20 A. That would be in a final 302 report or a final report,
21 yes.

22 Q. So is it standard then for there to be some kind of a
23 final 302 report or other report about the analysis of a piece
24 of digital evidence?

25 A. At the conclusion of the request from the case agent or

1 from an analyst, the CART examiner would do a final sort of
2 piece of paper -- a final, I guess you would say, report of
3 what the activities that took place during the --

4 Q. A narrative report describing the examination of a device
5 is typically produced at the end of the road?

6 A. It would be more technical. It would be very technical,
7 but, yes.

8 Q. I'm going to show you a document and see if you recognize
9 it.

00:46 10 MR. FICK: May I approach, your Honor?

11 THE COURT: You may.

12 Q. Take a quick look at that, and tell me if you're familiar
13 with that document or you recognize what it is.

14 You recognize that document?

15 A. I recognize that document.

16 Q. It's a document you've seen before?

17 A. I have, yes.

18 Q. Is that something that you were involved in helping to
19 prepare?

00:47 20 A. No.

21 Q. Do people you supervise -- were people you supervised
22 involved in helping to prepare that?

23 A. One of the names on the report is somebody I do supervise,
24 yes.

25 Q. Who is that?

1 A. Nathans.

2 Q. Were you aware of the work being done on an ongoing basis
3 as that report was being put together?

4 A. Again, I'm not from a micromanagement standard. I do know
5 that Nick Nathans was assigned with Petrozelli, and they were
6 working on scoping down the voluminous information from the
7 investigation.

8 Q. Okay. So the report is 53 pages long, right?

9 A. I have 53 pages, yup.

00:48 10 Q. And this is -- it's essentially a report of examination by
11 FBI personnel about their review of the Sony VAIO, right?

12 A. I would say it's more of an analytical product than it is
13 an examination product.

14 Q. Well, it's a report of what the examiners found in looking
15 at the Sony VAIO, right?

16 A. I believe, in the context of the way the report is
17 written, it's an analytical product that was worked on with the
18 forensic examiner.

19 Q. Now, you see at the end -- actually, before the
00:48 20 appendices, there's a line that says --

21 MR. CHAKRAVARTY: Objection to reading from this
22 report, your Honor.

23 MR. FICK: Well.

24 Q. This is not a final report, fair to say?

25 A. This is an analytical report. I'm not sure what you mean

1 by "final" or "not final."

2 Q. Well, toward the end it says, "Analysis remains ongoing,"
3 right?

4 A. Where does it say that, sir?

5 Q. If we could turn to Page --

6 MR. CHAKRAVARTY: Again, your Honor, I'm not sure this
7 is impeachment as opposed to just trying to testify to the
8 contents of the report that he's seen.

9 THE COURT: Well, go ahead.

00:49 10 MR. FICK: Thank you.

11 Q. Very last page, actually, 53.

12 A. Okay.

13 Q. Last sentence, "Digital forensic analysis remains
14 ongoing"?

15 A. Yes.

16 Q. Do you know if there was a later iteration of this, a
17 further iteration of something like this, an update to it?

18 A. I don't know what version that I have here in front of me,
19 but I did not see an additional version.

00:49 20 Q. You're not aware of any additional version?

21 A. I'm not aware of any additional version.

22 Q. This version is undated, by the way, right?

23 A. The copy that you have is, yes.

24 Q. And do you know whether similar types of reports were
25 written about any of the other devices seized in the case?

1 A. There were a number of 302s that were produced by numerous
2 examiners regarding the different pieces of evidence.

3 Q. So there were narrative reports describing the findings of
4 the examiners, right, for other pieces of evidence?

5 MR. CHAKRAVARTY: Objection, your Honor.

6 THE COURT: Overruled. You may answer it.

7 A. This report is unique in that it is a -- it's an
8 analytical report that was worked on with the senior analyst
9 and the CART examiner. The other reports that I'm making
00:50 10 reference to were -- would have been final 302 reports or final
11 reports that were technical details of what was performed
12 during the examination, not an analytical product.

13 Q. So the Sony was treated uniquely? It wasn't treated the
14 same as like the Samsung or the HP computers?

15 A. No. I think they were all treated the same. I think it
16 probably garnered the most attention.

17 Q. Do you know whether analytic reports were produced as to
18 the HP or the Sony?

19 A. Say that again.

00:50 20 Q. Do you know whether analytical reports were produced as to
21 the HP or the Sony?

22 A. Which numbers specifically are those, sir?

23 Q. Going to your chart on your screen, the HP is 2R14 from
24 Norfolk Street, and the Samsung is the 1W3 from Watertown,
25 right?

1 A. Yeah. I don't recall whether or not there were reports
2 done on those two.

3 Q. You don't know?

4 A. I don't recall.

5 Q. Anyway, these are the kinds of reports -- or this report
6 of the Sony is the kind of report that FBI agents and analysts
7 rely upon in the process of doing their investigations,
8 correct?

9 A. I'm not sure what you mean by that question, but I know
00:51 10 this report was produced by the senior analyst that was
11 assigned to the case.

12 Q. It's produced by the senior analyst and then provided to
13 people like investigating agents and prosecutors, right?

14 A. It's provided to the team members, yes.

15 Q. And the purpose is to give them some insight into what's
16 on that digital device, right?

17 A. Give them some insight or -- because, again, the volume of
18 data is so voluminous that they need some way to be able to
19 scope down what's on there to what's relevant to the
00:52 20 investigation.

21 Q. So this is a standard part of your practice, is to create
22 an analytical report and provide it to the people who need it,
23 right?

24 A. It's not a standard part of the process.

25 Q. So, again, the Sony was somehow treated differently?

1 A. No. I don't supervise the analytical branch, so I'm not
2 sure what is standard practice for analytical products. I know
3 the forensic -- the computer forensic side.

4 Q. Now, looking again at the chart on the screen, you
5 testified last week and introduced a bunch of exhibits related
6 to each of these devices, right?

7 A. Not all of them but some of them, yes.

8 Q. Do you know if the FBI has analyzed the interrelationships
9 between these devices themselves and between these devices and
00:52 10 other devices?

11 A. There's been some analysis for that, yes.

12 Q. Do you know if there's been analysis of whether files, for
13 example, can be traced moving from one to another?

14 A. There's been -- yes.

15 Q. Do you know whether there's analysis of whether these
16 devices were connected to each other at specific times?

17 A. "Connected" meaning networked?

18 Q. Attached.

19 A. Attached? I don't recall whether or not there's been
00:53 20 analysis of whether they were actually attached. Are you
21 talking about specifically the computers or you mean, like, a
22 thumb drive put into a computer?

23 Q. For example, a few minutes ago with Mr. Chakravarty you
24 talked about a single event where you looked at the registry
25 and found that the Kingston was plugged into the Sony at a

1 certain time, right?

2 A. Yes.

3 Q. Do you know whether's there's been sort of more
4 symptomatic investigation tracing the history of a thumb drive
5 among all the devices in the case?

6 A. Among all of the computers in the case?

7 Q. Sure. Let's start with that.

8 A. So 1R6, 2R14, and D385?

9 Q. Right.

00:53 10 A. Yes. I don't recall there's been an encompassing report.
11 I do know that we've looked at whether or not what devices had
12 gone into 1R6 and 2R14.

13 Q. So 1R6 is the Sony, and 2R14 is the Hewlett-Packard from
14 Norfolk Street, right?

15 A. It is, yes.

16 Q. Do you know if there's been similar analysis of tracing of
17 various devices to the Samsung, 1W3?

18 A. D385?

19 Q. Yes.

00:54 20 A. Again, I did a cursory look of D385. I didn't do an
21 exhaustive search or weren't asked to verify whether or not
22 those devices were in D385.

23 Q. I'm not asking about your search of 385 yourself. I'm
24 asking whether you are aware of whether the FBI did an
25 investigation of the history of device attachments into D385.

1 A. I don't recall -- I haven't seen an analytical report, so
2 I can't comment on that.

3 Q. You don't know?

4 A. I cannot comment on that.

5 Q. It is fair to say you would agree with me, wouldn't you,
6 that the interrelationship among devices can be an important
7 thing to know in an investigation, right?

8 A. The interrelationship between the different pieces of
9 evidence, say, thumb drives and computers?

00:54 10 Q. Yes.

11 A. And external drives?

12 Q. Yes.

13 A. Yes.

14 Q. That can tell you something about, for example, the
15 interrelationship among suspects, among other things, right?

16 A. I think, like we said -- we had mentioned on Thursday,
17 barring having a camera over somebody's shoulder, I'm not sure
18 you could tell exactly who might be at the keyboard.

19 Q. But it's useful to know when various devices might have
00:55 20 been connected to each other and interacted with each other,
21 right?

22 A. It is, yes.

23 Q. That can give you some evidence to make inferences about
24 the relationships among the people who may have used those
25 devices, right?

1 A. Probably more pattern-of-life information than inferences.

2 Q. You would also agree with me, wouldn't you, that there
3 were other devices that were important to the Boston Marathon
4 investigation that are not listed here at all?

5 A. There are over 600 -- 600 pieces of digital media alone.

6 Q. You have some knowledge, though, certainly of what the
7 investigation found and how it happened, right?

8 A. I do in the first couple of weeks as I was intimately
9 involved in the operations of the command post. When I assumed
00:55 10 my regular duties, I was overseeing the computer forensic
11 portion or the digital media portion.

12 Q. Right. So you supervised the CART team, the people that
13 are analyzing these devices, right?

14 A. Yeah. They're providing support to the analysts, yes.

15 Q. Along the way then, you have knowledge of the kinds of
16 things the people that work under you are discovering, correct?

17 A. In general, yes.

18 Q. You're aware, for example, that there were a couple
19 computers seized also from Katherine Tsarnaeva, Tamerlan's
00:56 20 wife, correct?

21 A. I would have to see the full evidence list. I don't have
22 that list in front of me. Again, with over 600 pieces of
23 evidence, I don't have the recollection.

24 Q. It doesn't stick out in your mind whether or not a couple
25 of devices were seized from Tamerlan's wife?

1 A. I didn't memorize every single piece of evidence that was
2 collected in this matter.

3 Q. I'm not asking that question. That wasn't my question,
4 sir. My question was whether you have a memory or whether you
5 have knowledge that computers were seized from Tamerlan
6 Tsarnaev's wife.

7 A. Specifically from his wife or from the Norfolk location?

8 Q. Whether you have knowledge that computers attributed to
9 Tamerlan Tsarnaev's wife were seized in the investigation?

00:57 10 A. I don't recall.

11 Q. You don't recall. Are you aware that cell phones
12 attributed to Tamerlan Tsarnaev were seized in the
13 investigation on Laurel Street in Watertown? They're not on
14 the list either, are they?

15 A. There were over 200 cell phones that were seized in this
16 matter.

17 Q. You would agree, right, that the cell phones belonging to
18 one of the two suspects are important pieces of evidence,
19 right?

00:57 20 A. You mean during the course of the investigation or to date
21 right now?

22 Q. In general. If the suspect -- one of the two suspects in
23 the bombing has a cell phone, you understand that's going to be
24 an important piece of evidence, a valuable piece of evidence,
25 right?

1 A. It was during the course of the investigation at the very
2 beginning, yes.

3 Q. Okay. Just trying to establish those are also not on this
4 list, right, Tamerlan's phones?

5 A. I was not asked to verify any files from those devices.

6 Q. Understood. You would also agree with me that it can be
7 important -- sometimes be important to know when a computer
8 first began to operate or was manufactured, right?

9 A. I'm not sure I understand that question.

00:58 10 Q. Well, if you're trying to figure out when certain digital
11 events on a computer happened and how that fits into an overall
12 investigation, it can be a useful piece of information to know
13 when the computer first came into existence as we know it,
14 right?

15 A. When it was made by the manufacturer or when it was
16 purchased from the store or when the owner bought it?

17 Q. Any number of those things. Any one of those facts could
18 be a useful fact, right?

19 A. Potentially.

00:58 20 Q. The date Windows was installed on a Windows computer is an
21 important fact to know in understanding where a particular
22 device fits into the history of events, right?

23 A. Well, the Windows installation -- it depends. I would
24 need to have more information in order to assess that. Windows
25 installations -- you can actually install Windows multiple

1 times over the course of the life of a computer. So I could
2 own a computer and do multiple installations of Windows. So I
3 would have to have more information to --

4 Q. So you're not willing to say whether it's at least a piece
5 of information that might be useful to know?

6 MR. CHAKRAVARTY: Your Honor, objection to the
7 argumentative style both of this lack of concession as well as
8 Mr. Fick's questions asserting facts not in evidence.

9 THE COURT: Overruled.

00:59 10 A. So could you repeat the question, please?

11 Q. Are you willing to acknowledge that the date Windows was
12 installed on a computer could be an important piece of
13 information to place the device in a time context relative to
14 the investigation?

15 A. It is one piece of information that could be utilized.

16 Q. Okay. Let's actually make it a little bit more concrete.
17 Now, I'm going to pull up Exhibit 1142-11. This is a document
18 that describes or shows the date Windows was installed on the
19 Sony VAIO, correct?

01:00 20 A. When that particular version of Windows, with that product
21 key, yes.

22 Q. So that's the date here, 2/26/11, correct?

23 A. That's what's reported in the registry. That's from 11 --

24 Q. 1142-11, right?

25 A. Yes.

1 Q. Now, there's no evidence that any other version of Windows
2 previously existed on the Sony VAIO, is there?

3 A. There's no evidence -- can you rephrase that or ask that
4 question, please, again?

5 Q. There's no indication, no digital artifacts, on the Sony
6 VAIO to indicate Windows was ever installed before this date,
7 is there?

8 A. Yes, but there's also no to say that it wasn't.

9 Q. But as far as we know for purposes of this investigation,
01:00 10 the Sony laptop, as we know it, Windows on that laptop was born
11 on February 26, 2011, correct?

12 A. That particular version, that particular license, was on
13 that date.

14 Q. Okay. And you're not aware of any evidence to suggest the
15 computer existed earlier or that -- I'm sorry, that there was
16 ever an earlier version of Windows, that the computer existed
17 in some earlier form?

18 A. I haven't done the verification or analysis of that, no.

19 Q. You don't know the answer?

01:01 20 A. I haven't done the verification or analysis.

21 Q. As far as the evidence that's in the case then at least,
22 the install date of Windows on the Sony was February 26, 2011,
23 right?

24 A. This particular install of Windows, the date is collected
25 as 2/26.

1 Q. And the Hewlett-Packard, the 2R14, from the family
2 apartment in Cambridge -- I'm going to pull up 1143-08. This
3 shows that the Windows install date on that computer was
4 September 23, 2011, right?

5 A. Yes. Again, that particular license, that particular
6 product key, that particular software, yes, that's what's
7 collected in the registry.

8 Q. Again, there's no evidence, at least none you're aware of,
9 to suggest that there was ever an earlier version of Windows on
01:02 10 that computer, correct?

11 A. That, I don't know. We'd have to do a further analysis
12 for that.

13 Q. You don't know, in other words?

14 A. What I'm saying is we'd have to do further analysis to
15 determine that.

16 Q. It's not something that was ever brought to your
17 attention, right?

18 A. I was not asked to verify whether or not there were
19 previously versions of Windows installed on the computer.

01:02 20 Q. Sitting here today, you are not aware of any evidence to
21 suggest Windows ever previously existed on that computer?

22 A. I can tell you factually from the registry report here
23 that this particular version of Windows was installed on that
24 date.

25 Q. Okay. My question is: You're not aware of any evidence

1 to suggest that Windows was ever there earlier, correct?

2 A. Yes, but I'm also not aware whether it wasn't or not.

3 Q. I understand. But my question simply was: You're not
4 aware of evidence that Windows was there earlier?

5 A. I have not done the analysis to determine whether there
6 were previously versions of Windows on this computer.

7 Q. Now, as to the Samsung -- no -- yes, the Samsung, the
8 Samsung from Laurel Street in Watertown, Tamerlan's computer,
9 as you put it?

01:03 10 A. What number, sir?

11 Q. Going back to your exhibit -- I'm sorry, your chalk, so to
12 speak, 1577, I believe, talking about the Samsung laptop, 1W3,
13 Watertown.

14 A. So D385?

15 Q. D385. 1W3 is in parentheses, yes.

16 A. Yes. That type of analysis was not done -- I don't have
17 access to that analysis for D385.

18 Q. Right. So my question is: Are you aware of when Windows
19 was installed on that computer?

01:03 20 A. I'm not.

21 Q. Did you ever have an awareness of when Windows was
22 installed on that computer?

23 A. I wasn't asked to verify or validate whether it was or was
24 not.

25 MR. FICK: If I could just have the screen for the

1 witness, your Honor?

2 Q. Showing you a document and see if this helps you to answer
3 the question. First of all, do you recognize, in general, what
4 this kind of document is?

5 A. It's a security account manager information file.

6 Q. Does this help you answer the question, for example, of
7 when the Windows administrator account on the 1W3 was
8 installed?

9 A. The administrators account are typically a part of the
01:05 10 standard installation, so I'm not sure whether or not this was
11 user created or whether or not it was machine generated.

12 Q. Does this enable you to say or does this enable you to
13 agree with me that the Windows administrator account on the
14 Samsung laptop was created on September 21, 2011?

15 MR. CHAKRAVARTY: Objection, your Honor. There's no
16 foundation for what this document is, where it's from.

17 THE COURT: Sustained.

18 MR. FICK: If we can clear this, and we'll go back for
19 everyone in the courtroom to see again Mr. Swindon's summary
01:06 20 exhibit. Are we back up?

21 Q. So just to review, we established, if I'm not mistaken,
22 that the Sony VAIO Windows install was dated to February of
23 2011 just a few minutes ago, right?

24 A. If that's what was on that exhibit that you showed, then,
25 yes.

1 Q. And we established that the HP Pavilion was September of
2 2011, right?

3 A. If that's from the exhibit report, then, yes.

4 Q. And you're unable to say, sitting here today, when the
5 Samsung Windows install happened, right?

6 A. I don't have the information available to make that
7 determination.

8 Q. Now, at the time the Sony VAIO Windows install happened in
9 February of 2011, Mr. Tsarnaev was still a high school student,
01:07 10 right?

11 A. I don't know that information.

12 Q. Well, I mean, you know things like the names of his
13 friends, right?

14 A. I do. I am aware of some of his friends, yes.

15 Q. You know he was arrested after the Marathon bombings in
16 2013 when he was a sophomore at UMass Dartmouth, right?

17 A. I do.

18 Q. So back in 2011, two years prior, he would have still been
19 in high school, correct?

01:07 20 A. I'm not sure the dates he was in high school.

21 Q. You're not aware of what, if any, computer the family
22 might have shared on Norfolk Street before September of 2011
23 when the HP Windows was installed, right?

24 A. Can you reask that again, please?

25 Q. We established, I think, with you that the desktop

1 computer, the Hewlett-Packard, at Norfolk Street, Windows was
2 installed on that computer in September of 2011, right?

3 A. We've established that Windows was installed on that
4 computer, but that did not draw the conclusion that that's when
5 the computer was brought into the house.

6 Q. You're not aware of any evidence that that computer
7 existed earlier, right?

8 A. Not from the data that we have here, no.

9 Q. You're not aware of any other evidence to suggest if any
01:08 10 computer existed earlier or if there was some other computer,
11 right?

12 A. I don't have that information.

13 Q. You just don't know. But what we do know is that the Sony
14 VAIO, the Windows install on that that we know about, was in
15 February of 2011, right?

16 A. The Windows install from the registry shows that that
17 install of Windows was done on that date on that computer.

18 Q. And that's two years prior to the time when Mr. Tsarnaev
19 is a sophomore in college, right?

01:09 20 A. Again, I'm not aware of the dates when his -- what his
21 student record was.

22 Q. Now, talking further about the Sony, you talked a little
23 bit in your direct testimony about device attachments -- you
24 remember that -- just a few minutes ago with Mr. Chakravarty?

25 A. I'm sorry. You said --

1 Q. Device attachments. You talked about finding the date --
2 that one date when the Kingston was inserted into the Sony?

3 A. That was one that we spoke on, yes.

4 Q. Were you aware that Tamerlan's HTC phone was connected to
5 the Sony at least twice prior to September of 2011?

6 A. I wasn't asked to verify that piece of information.

7 Q. Is it something you ever came to learn in your
8 investigation, in your work on the investigation?

9 A. There are multiple devices that were in the USB store
01:10 10 which comes out of the registry that were reported being
11 plugged into 1R6.

12 Q. But you're not -- sitting here today, you're not aware
13 whether Tamerlan's phone was attached twice prior to September?

14 A. I don't have that information in front of me to verify
15 that.

16 Q. Do you know if anybody at the FBI ever dug that
17 information out?

18 A. I'm aware that the registry was looked at and the
19 USB-stored devices were looked at, yes.

01:10 20 Q. Was there some kind of written report prepared about that
21 that you know of?

22 A. I don't have that to access. I don't recall.

23 Q. You don't know?

24 A. I don't recall.

25 Q. Are you aware that the Sony was used by multiple Skype

1 accounts, over the course of its existence, from your review of
2 the Internet Evidence Finder reports?

3 A. I do know that the Skype was used by the defendant.

4 Q. Okay. Do you also know that Skype was used by an account
5 called Bella Rizvan?

6 A. If you could pull up the report, I don't have the entire
7 internet history memorized.

8 Q. So that's not something that you recall?

9 A. I don't have the report memorized.

01:11 10 Q. Do you have it with you?

11 A. Is it a part of the report that -- in the exhibit?

12 Q. Your report wasn't given to us. I'm asking you if you've
13 got access to it.

14 MR. CHAKRAVARTY: Objection, your Honor. Your report
15 wasn't given to us. This witness didn't draft a report.
16 There's no evidence of any report.

17 THE COURT: Well, let's get -- we haven't even
18 identified what the report is, so --

19 Q. Well, in your testimony last week, you talked about
01:11 20 reviewing the various computers with an application called
21 Internet Evidence Finder, right?

22 A. Yes.

23 Q. And that extracts certain information about the computer's
24 internet activity over its life, right?

25 A. It evaluates and parses out the internet activity from a

1 particular computer, yes.

2 Q. Among the things Internet Evidence Finder isolates are
3 artifacts indicating or suggesting uses of Skype, correct?

4 A. It does have a social media component to it, yes.

5 Q. That includes Skype, right?

6 A. Yes.

7 Q. Skype is a communication program, voice and text-type
8 messages between computers over the internet, right?

9 A. It's like a peer-to-peer video chat, yes.

01:12 10 Q. Okay. And you just said a minute ago you are aware that
11 there was a log-in for Jahar Tsarnaev on Skype on the Sony,
12 right?

13 A. Yes, because that was a part of one of the exhibits that
14 we produced for 1R6.

15 Q. I'm asking you now: Are you also aware there was an
16 account on there called Bella Rizvan on the Sony?

17 A. I was not asked to verify whether or not that account was
18 on that computer.

19 Q. My question, sir, wasn't whether you were asked to verify
01:12 20 that. It's whether you know that from yourself looking,
21 presumably recently, at the Internet Evidence Finder reports?

22 MR. CHAKRAVARTY: Objection, your Honor. Asked and --

23 THE COURT: Overruled.

24 A. I don't have that information here to make that
25 determination.

1 Q. Whether or not you have it here in front of you now, do
2 you recall seeing that information when you looked at the
3 evidence --

4 A. I do not recall.

5 Q. You do not recall?

6 A. I do not recall.

7 Q. You do know that Bella is the name of one of Jahar's
8 sisters, right?

9 A. I do not.

01:13 10 Q. So you know a friend of his from UMass Dartmouth is
11 Giovanni Norgill, right? You said that last week?

12 A. I knew that from -- yes.

13 Q. You know that Dias Kadyrbayev is a friend of his, right?

14 A. I do know they were defendants in another matter, yes.

15 Q. You know that Katherine Tsarnaeva is Tamerlan's wife,
16 right? You said that last week?

17 A. Yes.

18 Q. But you don't know that Jahar had a sister named Bella?

19 A. The part of the investigation that I was responsible for
01:13 20 had no dealings with other siblings.

21 Q. That name never came up in your work with people under
22 your supervision about the electronic devices in the case?

23 MR. CHAKRAVARTY: Objection, your Honor.

24 THE COURT: You may answer it.

25 A. It did not.

1 Q. Now, I'm going to go to Exhibit 1142-01, which is the
2 selected internet history from the VAIO. I'm going to zoom in
3 on sort of part of it here, just the beginning.

4 Now, Exhibit 1142, this -- whoever created this called Key
5 Internet History it's just one page, right? It's one page
6 pulled out of the internet history?

7 A. It is one page pulled out of the -- generated from the
8 Internet Evidence Finder.

9 Q. Okay. And so I think you said there was something like
01:14 10 30,000 internet history entries on the Sony, right?

11 A. I believe so, yes.

12 Q. And so this one-page selection is a very, very small part
13 of that, right?

14 A. Yes, less than 30,000, yes.

15 Q. Substantially less?

16 A. Yes.

17 Q. And this was a selection made not by you but by the
18 investigative team, right?

19 A. Yes.

01:15 20 Q. But in the process of verifying this, you went back for
21 each -- if I understood your testimony, you went back for each
22 of these line items and went to the internet history to confirm
23 it's there, right?

24 A. Went to the internet history -- we went to the Internet
25 Evidence Finder results.

1 Q. To confirm that everything in this spreadsheet is actually
2 there?

3 A. We went to the results of the internet finder -- Internet
4 Evidence Finder and -- yes, and confirmed that it was there.

5 Q. You've been saying "we" again. You said "we" a few times
6 last week. When you say "we," do you really mean I, or were
7 there multiple people doing it?

8 A. I was with John Petrozelli, the senior analyst.

9 Q. In verifying the spreadsheets line by line, you did that
01:15 10 together, is that fair to say?

11 A. Yes.

12 Q. But you personally participated in every aspect of it,
13 correct?

14 A. Absolutely, yes.

15 Q. Now, in the process of verifying these items, you
16 obviously saw the entirety of the internet history, correct?

17 A. These were subreports from the larger base, so we were
18 confirming only what was on these reports.

19 Q. But in order to confirm them, you had to go back to the
01:16 20 original, to the collective, right?

21 A. The 30,000 entries?

22 Q. Yes.

23 A. Yes.

24 Q. And so, in the process of doing that, you had occasion to
25 observe that the bulk of the internet history on the Sony was

1 activity on Facebook and VK, which is a Russian Facebook
2 equivalent, right?

3 A. I'm sorry. What --

4 Q. Is it fair to say that the course of seeing the entire
5 internet history --

6 A. Right.

7 Q. -- you could observe -- you did observe that the bulk of
8 the internet history on the Sony was Facebook activity and
9 VK.com activity, a Russian Facebook equivalent?

01:17 10 A. I'm not sure I can assess that sitting here. We went line
11 by line to determine and validate and verify that this stuff
12 was there. It was so voluminous, I couldn't tell you whether
13 it was a percentage or not.

14 Q. You didn't even notice in passing where most of the web
15 addresses were coming from on that giant collection?

16 A. We went to these entries to make sure that they were there
17 and existed. As far as assessing what else was there, as far
18 as a percentage in its totality, we did not.

19 Q. So you were narrowly focused on these entries, didn't even
01:17 20 notice anything else on the overall record you were reviewing?

21 A. Other than that there was other internet activity there,
22 yes.

23 Q. Wasn't of interest to you where the predominant amount of
24 internet activity was?

25 A. It was of interest to me to make sure this information

1 existed in those reports.

2 Q. That's your sole and narrow focus; is this information
3 there? That's it?

4 A. That was my job, yes.

5 Q. In the course of your investigation earlier, in dealing
6 with the people under your supervision who reviewed the Sony
7 over the course of two years, did that topic ever come up?

8 A. Not specifically, no.

9 Q. Never had a discussion inside the FBI CART team about the
01:18 10 nature of the Sony's internet activity?

11 A. Not specifically the internet activity.

12 Q. Now, you're aware, correct, that the FBI did an analysis
13 of the search history, the internet search history, on the
14 Sony, right?

15 A. Some of those entries are included in these reports, yes.

16 Q. You are aware that the FBI did a separate analysis of the
17 search history on the Sony, correct?

18 A. What type of search history?

19 Q. Well, let me just put more of a point on it. The 53-page
01:18 20 report we were talking about before in front of you that
21 contains an analysis of the search history, correct?

22 A. Can you refer to what page that is, please?

23 Q. Sure, Page 46.

24 A. This looks like it's a collection of search terms.

25 Q. Right. So you testified that you're familiar with this

1 report, right?

2 A. In general, yes.

3 Q. You've seen it before, right?

4 A. Yes.

5 Q. Petrozelli and Nathans, the people who worked on it, are
6 people you work with, right?

7 A. Yes.

8 Q. And so you're aware that the FBI did an analysis of search
9 terms on the Sony that are indicative of his predominant
01:19 10 internet usage, right?

11 A. According to this report, yes.

12 Q. Well, you don't have any reason to think the report is
13 wrong, do you?

14 A. No.

15 Q. And it's fair to say that the top two terms in the
16 predominant search history are words that you might --

17 MR. CHAKRAVARTY: Objection.

18 Q. -- expect to see in the computer of an adolescent male?

19 THE COURT: Overrule.

01:19 20 A. Am I answering that question? Can you rephrase that
21 again, please?

22 Q. The top two search terms are terms you would not be
23 surprised to find in the computer of adolescent male, fair to
24 say?

25 A. I'm not going to say that. I'm not an adolescent

1 psychologist, so I don't know whether or not an adolescent male
2 would be searching for those terms.

3 Q. Among the top 16 search terms identified in this
4 predominant usage chart is the single word "Chechnya," correct?

5 A. Yes.

6 Q. You're aware that the defendant's family, his paternal
7 side of the family, comes from Chechnya, correct?

8 A. I'm aware they are from Chechnya, yes.

9 Q. Also fair to say that, among these top 16 predominant
01:20 10 usage search terms, there is nothing about Islam or jihad?

11 MR. CHAKRAVARTY: Objection, your Honor.

12 THE COURT: Sustained.

13 Q. Now, I'm going to move on to Exhibit 1142-13.

14 A. Are we done with this report?

15 Q. For the moment. You can leave it on your desk if you'd
16 like.

17 This is 1142-13, selected user files from the VAIO,
18 correct?

19 A. Yes.

01:21 20 Q. And this is a report that's about four-and-a-half-pages
21 long, correct?

22 A. Yes.

23 Q. And this is, again, a list of files selected by somebody
24 on the investigative team, correct?

25 A. Yes.

1 Q. And in addition to the name and path of the file, if we go
2 back to the top of the spreadsheet, there are these two columns
3 here, "created in local time" and "file system record in local
4 time." Do you see that?

5 A. Yes.

6 Q. It's correct, isn't it, that Windows maintains a variety
7 of date-and-time information about files?

8 A. Yes.

9 Q. And that's -- there are certain descriptors or categories
01:22 10 of each of the pieces of information Windows maintains,
11 correct? One of them is "created"?

12 A. That's one of them, yes.

13 Q. "Modified"?

14 A. Yes.

15 Q. "Accessed"?

16 A. Yup.

17 Q. Something called "MFT entry modified," the "master file
18 table entry modified"?

19 A. The "born on" date would be more appropriate.

01:22 20 Q. You're familiar with those categories of information that
21 Windows holds about files, right?

22 A. Yes.

23 Q. And fair to say the meaning and significance of that data
24 is not always intuitive or obvious?

25 A. It is to the forensic specialist but not to sort of the

1 general computer population.

2 Q. Okay. Now, the created date is, generally speaking, the
3 date or time that the file appeared on the computer or device
4 where the file is located, correct?

5 A. Depending on what versions of Windows, yes.

6 Q. And for the purposes of your chart here, which of the
7 Windows time categories is file system record date in local
8 time?

9 A. This was adjusted -- these were adjusted numbers for local
01:23 10 time. As we had talked about, some of them were --

11 Q. I want to break that down into two pieces. Put aside the
12 time zone issue for a moment. What is meant by "file system
13 record date"? That's not a term that shows up in Windows
14 itself, right? So what do you mean?

15 A. That was an adjusted time for the time record, for the
16 Zulu time.

17 Q. But both of these are local time, right? We have "created
18 in local time," and we have "file system record date in local
19 time," right? Both are local time?

01:24 20 A. If you could pull the thing out so I can see it in its
21 entirety, please?

22 Q. Sure .

23 A. So the created local time -- sorry. What was your
24 question again?

25 Q. I'm asking you about "file system record date in local

1 time." What is that? Which of the Windows time artifacts does
2 that come from?

3 A. That is not a Windows time artifact. That was, like, with
4 some of the -- several of the other spreadsheets, that was
5 added by the analyst.

6 Q. So added by the analyst on what basis?

7 A. I didn't create the report. We determined that this is a
8 user -- selected user file from the main directory listing
9 report.

01:24 10 Q. Sir, you didn't create the report, but you verified the
11 report, right?

12 A. I verified, yes, that the web cam media was created in
13 local time, yes.

14 Q. How did you verify file system record date in local time
15 if you can't tell me which Windows artifact it is?

16 A. When I sat with the analysts, we went over line by line to
17 determine that the web cam media entry was in the directory
18 listing, the main directory listing.

19 Q. So are you saying you did not verify the time entries in
01:25 20 the spreadsheets?

21 A. I did not create the file record time category.

22 Q. You didn't create the category. I'm asking if you
23 verified it.

24 A. I verified with the person who created the report, yes.

25 Q. So what? They just told you it was correct?

1 A. I sat with the analyst, and we went through the main
2 directory listing of what you're looking at here to determine
3 that the created local time. And we sat with the -- the senior
4 analyst that made this report, and we went over it line by line
5 together, yes.

6 Q. I understand you verified created in local time with the
7 analyst. What is file system record date in local time?

8 A. That's something that the analyst -- that is a --
9 something that the analyst made.

01:26 10 Q. Based on what?

11 A. I don't have that information in front of me.

12 Q. So when you sat with the analyst and verified the entries
13 line by line, the question didn't come up: What is that?

14 A. There were over -- there were a number of different
15 documents. I don't recall specifically this particular
16 document.

17 Q. Well, apart from this particular document, these two
18 categories, right, "created in local time" and "file system
19 record date in local time," those are all over multiple
01:26 20 spreadsheets that you put into evidence with Mr. Chakravarty
21 last week, right?

22 A. Yes.

23 Q. So what is "file system record date in local time"?

24 A. I would have to go back and ask the analyst. We went line
25 by line to determine that the "created in local time" came from

1 the master file list and that the path of the files were there
2 for selected user time.

3 Q. So bottom line is you can't answer that question sitting
4 here today, What is file system record date?

5 A. I don't have the information in front of me to answer that
6 question.

7 Q. You don't recall even knowing at the time you verified the
8 spreadsheet?

9 A. We went over multiple spreadsheets over a period of three
01:27 10 or four days.

11 Q. Right. But this category, file system record date on
12 multiple spreadsheets, you don't remember what that is?

13 A. I don't recall.

14 Q. Okay. So then, certainly, you would agree then, since you
15 don't know what it is, that the fact that the time the file was
16 created and the time in the second column doesn't necessarily
17 say anything about whether the file was ever opened?

18 A. The created in local time was when it was created on that
19 --

01:27 20 Q. Right. So it's simply the fact that there's another
21 column with a different time on it that's later doesn't mean
22 the file was opened on that date because you don't even know
23 what that column means, right?

24 A. I would have to get the information from the analyst to
25 verify what that information is.

1 Q. It's at least fair to say that from this spreadsheet one
2 cannot infer that the fact that there are two different times
3 means this file was ever opened?

4 A. Exactly, or that it was not or that it was.

5 Q. Right. There's no information?

6 A. I don't have the information to determine that from this
7 particular spreadsheet.

8 Q. Now, I want to go to a particular file on here. I'm going
9 to expand it just by way of example. See this

01:28 10 fundamentalconcepts.pdf? See that?

11 A. Uh-huh.

12 Q. Created date, September 1, 2004?

13 A. Okay.

14 Q. That can't be right, can it?

15 A. Well, it could be. If it was created on another device,
16 that creation date could have been carried over when it was
17 populated from a removable media device.

18 Q. I thought you just told us a few minutes ago that all of
19 the created dates here are the dates the file was created on
01:28 20 the Sony?

21 A. It's when the file was born with the exception of when
22 something is done with removable media or downloaded from the
23 internet.

24 Q. So your belief then is that this created in local time
25 simply reflects when Fundamental Concepts might have been

1 created on some other device?

2 A. I don't have that information in front of me, but I would
3 -- yes, based on the information here.

4 Q. Well, let's try comparing then to see what created certain
5 looks like on the master file table for this item. If I can
6 open Exhibit 1142-151, Page 1872, can you see that on your
7 screen, fundamentalconcepts.pdf, and then the highlighted
8 creation date?

9 A. Barely but -- can you zoom it out?

01:30 10 Q. You know, I think I might have to actually open it in PDF
11 to do that. But one moment. Go to Page 1872; zoom. Here we
12 have Fundamental Concepts. I thought I had it. Sorry.
13 Fundamental Concepts, going across, across, across. Creation
14 date of October 10, 2011.

15 A. Can you possibly bring up the other one, also, please, in
16 the other report?

17 Q. Which one?

18 A. The original report we were --

19 Q. Yes, absolutely. So we will go back to that, which is
01:32 20 1142-13, Fundamental Concepts, September 1, 2004.

21 A. Can you go back to the other report again, please?

22 Q. Sure.

23 A. Okay.

24 Q. So the created file in the master list, the 4,000-plus
25 page document, September 10, 2011, for Fundamental Concepts, on

1 your derivative -- or the FBI's derivative spreadsheet, it's
2 the 2004 date?

3 A. There were multiple different types of applications used.
4 This particular sheet that you're looking at was an X-Ways
5 forensic file listing export, and that report could have been
6 made from AD Labs.

7 Q. So there's -- a different software might give a different
8 answer to a question to when a file was created on a computer?

9 A. Potentially, yes.

01:33 10 Q. What did you actually use when you verified the derivative
11 exhibit, the one that showed 2004? How did you verify that
12 date?

13 A. We used multiple data sets. One of them was we wanted to
14 make sure that this entry -- that the file actually existed on
15 the computer and that the entry was in the file listing.

16 Q. So you're saying you didn't verify the dates?

17 A. We didn't -- the information that we used at the time was
18 -- could have been from the AD Labs. Could have been from the
19 other product.

01:34 20 Q. So different products, you're saying, can give a different
21 answer about when a file was created on a computer?

22 A. It's possible.

23 Q. Sitting here today, you don't know which is correct?

24 A. I don't know which is correct; I do not.

25 Q. It sort of stands to reason, though, that a computer where

1 Windows was installed in 2011 couldn't have had a file created
2 on it in 2004, right?

3 A. Not unless that file was created someplace else, either
4 the internet or a removable media and then copies to that
5 device.

6 Q. But it still has a creation date, a date it was born on
7 the device where it was --

8 A. Would be the born-on date, yes.

9 Q. As I understood it, the derivative spreadsheet was
01:34 10 supposed to show, as I understood it, the date the file was
11 born on the Sony, right?

12 A. I'm sorry. Can you ask that question again?

13 Q. As I understood the purpose of the derivative spreadsheet
14 and your description of it a few minutes ago, that column is
15 supposed to tell us when the file was born on that computer,
16 right?

17 A. It was created in local time on that computer, yes. I'm
18 sorry, when the file was created in local time.

19 Q. On that computer or not?

01:35 20 A. Not necessarily on that computer.

21 Q. Not necessarily, right?

22 A. Depending on how that file -- where that file was
23 originally created from.

24 Q. So how do you know the difference? How can we interpret
25 any one of these items what it means? Are you able to do that

1 sitting here today?

2 A. Not sitting here today, no. We would need further
3 analysis on the file. The file does exist on the computer, and
4 the file entry does exist on the directory listing.

5 Q. But you're not confident about the dates in these
6 spreadsheets?

7 A. I don't think any forensic person would ever be a hundred
8 percent confident in dates and times generated by the operating
9 systems.

01:35 10 Q. I'm still curious. What happened when you tried to verify
11 this date? You must not have compared it to the 4,000-page
12 list that's in the exhibit because that has a different date,
13 right?

14 A. Must be, yes.

15 Q. But sitting here today, you don't know what device output
16 or what software output you used to make the verification?

17 A. Not for this particular spreadsheet, no.

18 Q. For any of the spreadsheets, can you say where the data
19 came from?

01:36 20 A. We had -- there were hundreds of files, and there were at
21 least 50 or 60 spreadsheets that we were verifying.

22 Q. So you didn't have a standard procedure to verify the
23 dates and times in the spreadsheets?

24 A. There was no standard procedure because it was a bunch of
25 different types of devices. It was cell phones, thumb drives,

1 hard drives.

2 Q. Let's just stick with computers. Did you have a standard
3 operating procedure to verify dates and times for lists of
4 files from computers?

5 A. There was no standard procedure, no.

6 Q. Just to -- this is not an isolated problem, fair to say?

7 A. I can't determine that with the information in front of
8 me.

9 Q. Well, let's take a look at a couple more examples at
01:37 10 least. I'm going to go to Page -- well, there's the next one
11 right here, fundamentalconcepts.pdf, February 14, 2006. That's
12 also a date that's like -- something like five years before the
13 Windows install on the Sony, right?

14 A. If the -- the 2011 date, when that particular install of
15 Windows, yes.

16 Q. So certainly would raise a question in your mind: How is
17 it that a file could be created on the Sony in 2006, right?

18 A. That file could have been created on the internet in 2006
19 and then put on the Sony --

01:37 20 Q. Again, it's just --

21 A. -- in 2011.

22 Q. It's just an example of that date doesn't necessarily
23 reflect the creation date on the Sony?

24 A. Depending on what type of file it is, where that file was
25 created, it may not reflect when it was created on the Sony.

1 Q. Just as a point of comparison, going to the master file
2 table for that file, the Exhibit 1142-151, Page 150.

3 A. That's not the master file table, but it is a directory
4 listing.

5 Q. For purposes of the exhibit in this case, there was a
6 4,000-plus-page exhibit which you represented to be a complete
7 list of all the files on the Sony, right?

8 A. That's the complete list that the software product
9 produces, yes.

01:38 10 Q. And so if we go to that list and look for the
11 fivegrounrules.pdf document, we again see a September 2011
12 creation date rather than a 2006 date, right?

13 A. Can you blow that up a little, please?

14 Q. Go to Page 150. Here we go. Five Ground Rules. Scroll
15 across. We get a date September 10, 2011, again, right?

16 A. Yes.

17 Q. So the created data in this file listing doesn't match the
18 created data on the FBI's derivative exhibit again, right?

19 A. That data is different, yes.

01:39 20 Q. So fair to say it would not be appropriate to rely on the
21 derivative exhibit, which is 1142-13, to figure out what date a
22 file might have appeared on the Sony VAIO?

23 A. We'd rely on -- yes. I would rely on the master file -- I
24 mean, the complete list.

25 Q. Okay. Now, if I'm hearing you, you're saying the complete

1 list is correct?

2 A. The complete list is generated by the approved software
3 tool.

4 Q. So the derivative list was generated by some unapproved
5 software tool?

6 A. No. The generated list was created by the senior analyst
7 and the examiner that worked with him.

8 Q. Out of the air or they used some tool?

9 A. They used multiple different pieces of information.

01:40 10 That's why it's called derivative.

11 Q. Okay. They used an unapproved tool to create the
12 derivative exhibit?

13 A. I'm not sure specifically what tool -- I mean, they used
14 -- it's an Excel spreadsheet, but the data came from multiple
15 different data sets as processed by the evidence -- or the
16 evidence was processed by.

17 Q. You don't know what tool was used to generate the data on
18 the derivative spreadsheet, one, right?

19 A. I'm not sure a tool was used to generate the derivative
01:40 20 spreadsheet. The information came from multiple places to get
21 to the derivative spreadsheet.

22 Q. Wherever it came from, you don't know where it came from?

23 A. I don't have it in front of me to make that determination.

24 Q. Okay. And the authoritative, I guess, you're saying,
25 table, you didn't -- in the process of verifying the derivative

1 spreadsheet, you didn't check that data against the
2 authoritative table?

3 A. That file creation date could have been from AD Labs.
4 Again, we used multiple tools for this to create these
5 derivative spreadsheets.

6 Q. So the tools conflict with each other?

7 A. Possibly, yeah.

8 Q. So --

9 A. Depending on --

01:41 10 Q. Where does that leave the bottom line? What's your -- as
11 an expert computer forensic examiner on the witness stand
12 today, which set of data can we rely on? The complete list
13 we've got up on the screen here showing September 11th or the
14 derivative list showing a date in 2006? Can we rely on either
15 of them?

16 A. It depends on what you're trying to determine.

17 Q. If you're trying to determine when a file will appear or
18 was created on the Sony VAIO, what would you rely on?

19 A. I would rely on the master file list.

01:42 20 Q. Which is the thing that's on the screen right now?

21 A. The thing that's on the screen right now, yes.

22 Q. So if that's what the reliable source is, why didn't you
23 verify the derivative evidence against the reliable source?

24 A. That derivative evidence could have been when that file
25 was created in another location.

1 Q. But if that's not what the exhibit is supposed to be
2 portraying, why wouldn't you correct it?

3 A. I'm not sure that that's accurate. If you pull it up, it
4 doesn't say created on the 1R6. It just says "file created."

5 Q. The spreadsheet doesn't say anything about what created
6 means. That's why I asked you initially. If I understood you
7 correctly, your initial response was created means the date it
8 was born on the Sony.

9 A. No, I did not say that.

01:42 10 Q. Okay. At least we're clear now. Created date on those
11 derivative listings is not a reliable way to assess when a file
12 appeared on the Sony?

13 A. Creation date was when that file was created, not -- it
14 would not be indicative of when it potentially could have been
15 created on the Sony, yes.

16 Q. It would not be indicative of when it potentially could
17 have been created on the Sony, okay.

18 Now, I'm going to return to discussing a few more
19 big-picture things about some of these devices. I'm going to
01:43 20 go back to your list, 1577 -- I'm sorry, 1557. I'm going to
21 talk about the Samsung a little bit here again, the 1W3, D385.
22 Do you see that?

23 A. Yes.

24 Q. Now, you testified last week that the FBI concluded that
25 this was, in fact, Tamerlan's laptop computer, correct?

1 A. I testified that we were aware that it was Tamerlan's
2 computer, yes.

3 Q. And you know that both from your understanding of what was
4 found on the computer itself and other investigative
5 information, correct?

6 A. Yeah. I did a cursory -- as a part of this process, did a
7 cursory look of D385.

8 Q. You're also aware of other investigative information that
9 ties the computer to Tamerlan, right?

01:44 10 A. I'm not -- I don't know what specifically you're referring
11 to but in the general course of the investigation, yes.

12 Q. Well, you are aware, for example, it was found in a
13 computer bag with his high school diploma, right?

14 A. I'm aware that it was found in a computer bag. I don't
15 know what the rest of the contents of the bag were, but I am
16 aware that it was a computer bag.

17 Q. You're aware that the computer was connected to the
18 internet in Russia multiple times between January and July of
19 2012 when Tamerlan was there, right?

01:44 20 A. I don't have that information in front of me to determine
21 that.

22 Q. Well, is that something you ever became aware of in your
23 work on this investigation?

24 A. Not me personally, no.

25 Q. You never became aware of information that Tamerlan

1 traveled to Russia from January to July of 2012?

2 MR. CHAKRAVARTY: Objection, your Honor.

3 THE COURT: Overruled. You may have it.

4 A. I'm not sure that that's what you asked me. I think you
5 asked me if whether or not the computer was connected to the
6 internet when he was traveling in Russia.

7 Q. Let's take it step by step. Are you aware of information
8 that Tamerlan Tsarnaev traveled to Russia between January 21
9 and July 17 of 2012?

01:45 10 A. I'm aware that Tamerlan traveled to Russia, yes.

11 Q. In roughly that time frame?

12 A. In roughly that time frame, yes.

13 Q. And are you aware that there are digital artifacts on the
14 Samsung showing that that computer was connected to the
15 internet in Russia during that time frame?

16 A. I do not have that information in front of me, nor am I
17 aware of that.

18 Q. You never were aware of that?

19 A. I was never aware of that.

01:45 20 Q. Are you aware that the web history on the Samsung includes
21 information about Tamerlan's log-in to multiple accounts
22 associated with him?

23 MR. CHAKRAVARTY: Objection, your Honor.

24 THE COURT: Sustained.

25 Q. You said you did a cursory review of the Samsung in

1 connection with preparing for your testimony here, correct?

2 A. I did a cursory review of the computer because it was
3 listed on this evidence sheet, yes.

4 Q. And during the course of the last two years, you
5 supervised individuals who worked on the analysis of this
6 computer, correct?

7 A. That's correct.

8 Q. And you over that time became aware of things that they
9 were doing and finding, correct?

01:46 10 A. I'm aware of what they were doing in general, yes, as a
11 supervisor.

12 Q. Particular findings were never brought to your attention?

13 A. Specific findings, no.

14 Q. Reports that they wrote -- that the people under your
15 supervision wrote about the Samsung were never brought to your
16 attention?

17 A. Other than through the general approval process, I don't
18 have the specifics of the reports in front of me.

19 Q. Well, again, part of the general approval process, you're
01:47 20 the supervisor. You would review reports written by the people
21 you supervise, correct?

22 A. Yes.

23 Q. That would include reports that people you supervise wrote
24 about the Samsung, correct?

25 A. Reports that -- any reports that they would write, yes.

1 Q. Okay. And that's a normal kind of thing that you would
2 rely on in the course of your work as a supervisor, correct?

3 A. Rely on for what, sir?

4 Q. Rely on for performing your duties.

5 A. Rely on -- I think the relationship as a supervisor of the
6 forensic team is a little different than normal. The forensic
7 person is actually assigned to the investigation, so any
8 investigation subject matter would be decided or run by the
9 case agents. I would make sure -- mine is more day-to-day
01:47 10 operations. Mine is: Did you come in to work on time? Is
11 your -- you know, type of information.

12 Q. You still have occasion to read the reports that the
13 analysts write about the Samsung, correct?

14 A. The forensic examiners write, yes, not the analysts.

15 Q. The forensic analysts write reports about their findings
16 to pass them along to others in the FBI and the prosecution
17 team to know what the evidence means, correct?

18 A. Their technical reports, if they worked for me, would go
19 through me, yes.

01:48 20 Q. They go through you, and they go from you to investigating
21 agents, case agents, prosecutors, and the like, correct?
22 That's the reason they exist?

23 A. They would go to the case file. I'm not sure where they
24 would be distributed from there.

25 Q. So you don't know whether the reports that your

1 subordinates write about important pieces of digital evidence
2 ever see the light of day?

3 A. I approve them for accuracy and make -- and then once
4 they're uploaded to the file, within the case file, I'm -- I
5 don't make the investigative decisions on any particular case.

6 Q. Well, you did tell Mr. Chakravarty, right, that you're
7 aware from your exposure to the Samsung over the last two years
8 that a lot of similar kinds of files to those on the Sony were
9 on the Samsung, correct?

01:49 10 A. Actually, I think I said, in the course of reviewing the
11 evidence and validating, verifying for the trial, I am aware of
12 a cursory look of D385.

13 Q. Okay. So you became aware, if you weren't already aware,
14 that a lot of the same kinds of material is also on the
15 Samsung, right?

16 A. Yes.

17 Q. And you also talked about the fact that there is
18 encryption software on the Samsung, correct?

19 A. I talked about I was aware that there was a TrueCrypt
01:49 20 volume on the drive, yes.

21 Q. And TrueCrypt is a very powerful piece of encryption
22 software, fair to say?

23 A. I'm not sure I would characterize it as powerful, but it's
24 a freeware product that anybody can download to encrypt data.

25 Q. Well, if one has a good password in TrueCrypt, it's pretty

1 hard, even for very sophisticated tools, to get inside, right?

2 A. If the software is configured properly and the password is
3 strong enough, it would be difficult, yes.

4 Q. Even for the most sophisticated U.S. Government tools,
5 very difficult, right?

6 A. For the purposes of this, yes.

7 Q. But you understand, because you supervised the people who
8 did it, that it was possible to get into Tamerlan's encrypted
9 volumes because he had a bad password, right?

01:50 10 A. No, I'm not aware of that.

11 Q. You're not away the password was Allahu Akbar, with a
12 number after it?

13 A. I'm not.

14 Q. You don't know how FBI analysts managed to find out what
15 was in the encrypted volumes on Tamerlan's computer?

16 A. I'm aware that they are able to access that. I'm not
17 aware how they were able to get the password.

18 Q. Now, fair to say that the use of encryption is considered
19 something -- in investigative terms, it's considered tradecraft
01:50 20 when it's used by terrorists or criminals, right?

21 A. I'm not sure I can make that assessment.

22 Q. As a trained FBI agent, that's not the kind of assessment
23 you would make?

24 A. What's that?

25 Q. Well, what constitutes tradecraft for criminals or

1 terrorists.

2 A. I mean, that's a very easy question with a very long
3 answer. Tradecraft can be a number of different things.

4 Q. Is it fair to say that the use of encryption by a
5 terrorism suspect is an example of tradecraft?

6 A. I'm not aware of any terrorism suspects that have used
7 encryption, so I'm not sure I can answer that question.

8 Q. Well, are you aware that *Inspire Magazine*, one of the ones
9 that you talked about with Mr. Chakravarty last week,
01:51 10 recommends that people who want to engage in terrorism should
11 use encryption?

12 A. I'm not aware of that, no.

13 Q. I'm just going to pull up a copy of Exhibit 1475-22.

14 MR. CHAKRAVARTY: Objection, your Honor. This is not
15 impeachment.

16 THE COURT: Sustained.

17 If this is a pausing to go to a new thing, it's 11:00.
18 We'll take the morning recess.

19 MR. FICK: Sure. Thank you.

01:51 20 (Recess taken at 11:02 a.m.)

21 THE CLERK: All rise for the Court and the jury.

22 (The Court and jury enter the courtroom at 11:28 a.m.)

23 THE CLERK: Be seated.

24 THE COURT: Mr. Fick?

25 MR. FICK: Yes, your Honor. Thank you.

1 BY MR. FICK:

2 Q. So good morning again, Agent Swindon.

3 A. Good morning.

4 Q. Just a few more questions about your knowledge of the
5 Samsung laptop here among the devices seized, Tamerlan's
6 laptop. We talked a bit about TrueCrypt a few minutes ago. Do
7 you remember that? That's the encryption software?

8 A. Yes.

9 Q. It's true, isn't it that TrueCrypt is not among the
02:19 10 software on the Sony VAIO?

11 A. I'm not aware of TrueCrypt being on the Sony VAIO, no.

12 Q. Well, and, in fact, you introduced last week an exhibit
13 listing all of the software on the Sony VAIO, correct?

14 A. Yes.

15 Q. And that list did not include TrueCrypt, correct?

16 A. It did not include TrueCrypt, yes.

17 Q. So it's not just that you're not aware of TrueCrypt being
18 on the Sony VAIO, in fact, TrueCrypt is not on the Sony VAIO?

19 A. TrueCrypt is not on the Sony VAIO.

02:19 20 Q. Thank you.

21 Now, in the course of your cursory review of the Samsung,
22 or previously in your work as the supervisor of the CART team,
23 did you ever have occasion to see what the desktop of the
24 Samsung looked like, the wallpaper, the background, all of
25 that?

1 A. On D385.

2 Q. On the Samsung, Tamerlan's laptop?

3 A. No.

4 Q. You never saw what the desktop looked like?

5 A. I never saw what the desktop looked like.

6 Q. Did your cursory review of the Samsung include the
7 Internet history of the Samsung?

8 MR. CHAKRAVARTY: Objection, your Honor, to going
9 through each of the portions of --

02:20 10 THE COURT: Yes, sustained.

11 MR. FICK: I'm sorry?

12 THE COURT: Sustained.

13 MR. FICK: I'm not sure what the objection was.

14 THE COURT: I take it as relevance.

15 MR. FICK: May we approach?

16 THE COURT: All right.

17 (Discussion at sidebar and out of the hearing of the
18 jury:)

19 MR. FICK: So two things: I would suggest, first of
02:20 20 all, the government opened the door to at least probe the
21 witness's knowledge of the Samsung by itself, the prosecution,
22 asking questions about what he knew about the Samsung.

23 Second, this is going nowhere near mitigation
24 evidence. This is strictly evidence about the crime itself and
25 the potential motives of the crime.

1 THE COURT: How?

2 MR. FICK: Information about the contents of
3 Tamerlan's laptop and how that reflects on his state of mind.
4 Potential preparation of the crime is evidence of the crime, of
5 the motive.

6 MR. CHAKRAVARTY: I understand Mr. Fick saying it goes
7 to Tamerlan's state of mind, evidence that might be on his
8 computer that this witness, the computer forensic specialist
9 who didn't even verify that information would somehow be
02:21 10 capturing Tamerlan -- the coconspirator's state of mind when
11 there's no evidence that this defendant had any access, knew
12 what was on there or even that some of these questions about
13 where the surface tree was and some of those things. I don't
14 think the defendant's argument is that the defendant
15 participated in that; in fact, it's just the opposite. They're
16 suggesting that Tamerlan was doing a bunch of other things that
17 the defendant was not. All that is outside this witness's
18 basis of knowledge with regards to the device as well as it's
19 not relevant to the conspiracy charge.

02:22 20 MR. FICK: I'm asking the witness questions about what
21 he knows about what's on the computer.

22 THE COURT: And so what issue does that go to?

23 MR. FICK: It goes to Tamerlan's role in the
24 conspiracy, among other things. I mean, it's evidence of --

25 THE COURT: Well, that sounds inculpatory; in other

1 words, it goes to prove the offense is a conspiracy.

2 MR. FICK: Well, there's no requirement, I would
3 suggest, that the defense is only ever allowed to elicit
4 exculpatory evidence. I mean, if it's evidence of the crime,
5 if it's evidence of a motive of a coconspirator, it is relevant
6 to the case, and simply the fact that we happen to be the
7 defense of one of the conspirators does not mean that we can't
8 elicit evidence about the offense to put in the context and to
9 correct the misimpression that the government's presentation is
02:22 10 making.

11 MR. CHAKRAVARTY: Right there it's motive evidence.
12 The motive evidence is to the extent that the government is
13 offering to show that was not the defendant's motive is one
14 thing, but to show alternative motives or in this case that the
15 motive was even greater for the coconspirator seems to be a
16 relative culpability issue and has nothing to do with --

17 MR. FICK: Relative culpability matters in terms of
18 correcting misimpressions that the government's presentation of
19 the case is creating at this stage of the case. It's evidence
02:23 20 about the offense, it's evidence about the alleged offender
21 that is specifically tied to not only the motive for the crime
22 but what he did in terms of committing the crimes.

23 THE COURT: No. Excluded.

24 (In open court:)

25 BY MR. FICK:

1 Q. So, Agent Swindon, I'd like to talk a little bit now about
2 how one traces the history of when a USB device was attached to
3 a computer, okay?

4 A. Okay.

5 Q. Okay? So you've heard of something called SetupAPI is a
6 registry artifact in Windows. You're aware of that?

7 A. I have to look at the registry report, but I believe it is
8 one of the categories in a registry report, yes.

9 Q. Right. And that captures information about when a USB
02:24 10 memory device is plugged into a computer for the first time,
11 correct?

12 A. I'm not sure what the chronological of events are, but I
13 do know there is information stored there, yes.

14 Q. SetupAPI stores information about USB device attachments
15 into a computer?

16 A. I would have to test that. I don't have that information
17 in front of me.

18 Q. Well, I'm not talking about a specific computer, I'm
19 talking about the methodology of doing the investigation now,
02:24 20 okay? So as a general matter, SetupAPI contains date and time
21 information about when a device is first plugged into a
22 computer, correct?

23 A. You have to pull that up so I can see a registry report to
24 see what you're referring to.

25 Q. So you don't know what SetupAPI is sitting here today?

1 A. I'm familiar with it. It's an entry in the USB report
2 that comes from the registry, yes.

3 Q. And so you're not aware that that records the first time a
4 USB device is attached?

5 A. It records when it is attached. I'd have to see the
6 report to know that that is the first time that was in that.

7 Q. The registry, apart from SetupAPI, also contains other
8 information about incident -- incidents when a USB is attached,
9 correct?

02:25 10 A. Yes, it does.

11 Q. Okay. Now, these two sources I've mentioned, the SetupAPI
12 and other data in the registry, actually record the event of
13 the attachment, right?

14 A. It would be the physical attachment or the physical
15 putting of the USB drive into that particular machine.

16 Q. And in addition to those pieces of data, there's -- there
17 are also artifacts called shortcuts and links that I think you
18 testified about with Mr. Chakravarty, right?

19 A. Yes.

02:25 20 Q. Okay. And shortcuts and links and jump lists contain
21 information about files that a user may have accessed on a USB
22 device, right?

23 A. Among other things, but yes.

24 Q. Okay. So those record information about the files
25 themselves, not the event of the USB connecting, correct?

1 A. It could be the same event. But, yes, it does capture the
2 file information.

3 Q. So in other words, you might be able to infer something
4 about when a USB was attached from the jump list or link
5 information but that's -- the jump list or link information
6 itself records information about the file on the USB storage
7 device, right?

8 A. Right. So just for clarification, the registry contains
9 the information about the hardware and the connection of when
02:26 10 that piece of hardware went into that particular computer as
11 opposed to the link file is going to have information regarding
12 a file or files or folder that was accessed on that removable
13 drive.

14 Q. Right. So those are -- they're related but different
15 things, right?

16 A. Yes.

17 Q. Okay. So I'm going to pull up Exhibit 1142-02 which is
18 the exhibit called "External Device Access on the Sony." You
19 remember this spreadsheet that you talked about with
02:27 20 Mr. Chakravarty, right?

21 A. I do, yes.

22 Q. Okay. And this spreadsheet is based on jump list and
23 shortcut data about files that were viewed on the Sony that
24 were located on external devices, correct?

25 A. These are the information from the jump list records that

1 existed on the computer, yes.

2 Q. Okay. Jump list and shortcut records?

3 A. Yes.

4 Q. Okay. So this is not a listing of the device attachment
5 registry information?

6 A. It includes some of the same information but it is not the
7 registry report.

8 Q. It's not the registry report about the event of the device
9 attachment, it's information about the files that were viewed
02:27 10 on the external devices?

11 A. Yes.

12 Q. Okay. Now, the creation date for each of these entries is
13 the date the file was created on the external device, correct,
14 because these are jump lists and links, right?

15 A. I believe this might be the creation date of the actual
16 link file. Let's see. 1B shortcut.

17 Q. Do you know?

18 A. Can you give me a minute because this is the only -- this
19 is a -- a derivative report does not include all the

02:28 20 information. So I would need to see the file, the information
21 about the file, and then also the information about the
22 Kingston thumb drive and the registry to determine that.

23 Q. Well, this is a spreadsheet that you reviewed and deemed
24 to be accurate enough to include in an exhibit, correct?

25 A. Yes.

1 Q. So sitting here today, you don't know what the creation
2 date column refers to?

3 A. I would need the other two pieces of information that we
4 verified this with to determine that.

5 Q. Sitting here today you don't remember what those other two
6 pieces of information were?

7 A. We verified hundreds of pieces of information on various
8 spreadsheets.

9 Q. Okay. So sitting here you cannot tell me, then, whether
02:29 10 this is the creation date of the file on the thumb drive or
11 whether it's the date the thumb drive was inserted in the
12 computer?

13 A. Not without the supporting information.

14 Q. You just don't know?

15 A. Not without the supporting information.

16 Q. Okay. Now, this Patriot thumb drive here, I believe you
17 talked about that with Mr. Chakravarty, the serial number
18 reflected there, that's not the same as the Patriot thumb drive
19 that was recovered in the investigation and was included as an
02:29 20 exhibit, correct?

21 A. This is the -- you're talking about the volume serial
22 number?

23 Q. Right.

24 A. Yes, that is not the Patriot that was --

25 Q. And, in fact, this Patriot thumb drive with this volume

1 serial number was never recovered in the investigation, was it?

2 A. I don't have it, no.

3 Q. You're not aware of it being recovered?

4 A. I'm not aware of it being recovered.

5 Q. Now, do you know whether the FBI ever traced the artifacts
6 from this missing Patriot across all of the electronic devices
7 in the case?

8 A. I'm not sure I understand the question.

9 Q. Well, for example, what we have here on this chart
02:30 10 reflected in the first line is a data artifact taken from the
11 Sony about this particular Patriot thumb drive at a particular
12 point in time, right?

13 A. Yes.

14 Q. At some point in time, it was attached to the Sony and
15 this file on the Patriot thumb drive was viewed from the Sony,
16 right?

17 A. Yes.

18 Q. Okay. Now, did the FBI, to your knowledge, do any
19 investigation of whether this Patriot thumb drive, the missing
02:30 20 Patriot, was attached to other devices seized in the case?

21 A. I believe that there was an analysis done on that, yes.

22 Q. And was any kind of writing produced from that analysis?

23 A. I don't have access to that report.

24 Q. Do you know whether --

25 A. Or a report.

1 I don't know.

2 Q. Now, another one of the devices you talked about was the
3 Hewlett Packard desktop computer seized from 410 Norfolk
4 Street, the Tsarnaev family apartment. You remember that?

5 A. If you could bring it up to reference it, yes.

6 Q. Of course. I'm bringing back up 1557. The second line
7 here, 2R14, HP Pavilion, 410 Norfolk, that's a desktop computer
8 seized from 410 Norfolk Street, the Tsarnaev family apartment
9 in Cambridge, correct?

02:31 10 A. It was seized from 410 Norfolk, yes.

11 Q. Okay. And I think you testified on direct with
12 Mr. Chakravarty last week that you acknowledge -- the FBI
13 acknowledges that that computer was used by many people, right?

14 A. I believe people -- yeah, many people had access to that
15 computer, yes.

16 Q. A large number of Tsarnaev family members at various times
17 lived in that apartment, right?

18 A. I don't know. "Large" isn't a number. I'm not sure that
19 we were able to determine how many, whether small or large, who
02:32 20 had access to that computer.

21 Q. Well, you testified that you're aware of Tamerlan's wife
22 Katherine, who she is, right?

23 A. Yes.

24 Q. You heard the name, Jahar's father, Anzor?

25 A. Only from the computer username.

1 Q. You have no other knowledge of his father's name being
2 Anzor from the investigation?

3 A. I don't. I don't.

4 Q. Ever heard of his mother, Zubeidat?

5 A. I didn't have anything to do with his parents in this
6 investigation.

7 Q. So you know a number of people had access to the computer
8 at 410 Norfolk Street, this computer, but you don't know who
9 that might have been?

02:32 10 A. Not from the information in front of me, I can't determine
11 that, no.

12 Q. Well, apart from the information in front of you, from
13 your knowledge of the investigation, being a supervisor of the
14 CART team for two years -- for the last two years, do you know
15 anything about that?

16 A. Well, there are a number of pieces of information we would
17 use to determine access to a computer. We would use the
18 username that's associated with the computer. There would also
19 be pattern-of-life investigative information that we would use.

02:33 20 And then there would be email access, Skype access and
21 different types of maybe social media or access that we would
22 be able to determine who was using that computer.

23 Q. And when you say "pattern-of-life information," that's
24 information developed from the investigation about people who
25 may have had access to the computer, right?

1 A. It's more -- not specifically the computer but pattern of
2 life would be when somebody comes and goes either for work or
3 for school or --

4 Q. And your testimony was you do know that multiple people
5 had access to this computer, right?

6 A. Yes.

7 Q. But you don't know who -- you can't sort of list for me
8 who that might have been?

9 A. I can't specifically tell you who specifically had access
02:33 10 to that computer.

11 Q. Now, one of the artifacts that you looked at in Exhibit
12 1143-01, which I will pull up here -- these are exhibits in
13 evidence. I'm going to go to 1143, 1143-01. You testified
14 about an artifact in this derivative spreadsheet noting that on
15 January 1st at 2013 at 1:47 a.m. there was a log in to Yahoo
16 email for Jahar Tsarnaev. Do you see that?

17 A. I do see that, yes.

18 Q. Isn't it true that that is the one and only time there is
19 any record on this computer of that email account being
02:35 20 accessed?

21 A. I don't have that information in front of me.

22 Q. And apart from it being in front of you, do you know that
23 to be true or not?

24 A. I don't know that to be true.

25 Q. But you don't know that is not true?

1 A. I don't know it's not true.

2 Q. Sitting here today you can't say whether there was ever
3 another occasion on which Jahar Tsarnaev's email was accessed
4 from that computer?

5 A. I don't have the information in front of me to make that
6 determination.

7 Q. Did anyone ever ask you to make that determination?

8 A. No.

9 Q. And I'm going to also open 1143-05A, which is a derivative
02:36 10 spreadsheet -- sorry. One moment. Bear with me one moment.

11 (Pause.)

12 Q. So 1143-05A is the complete -- well, it's the lengthy
13 2,000 page or so long complete spreadsheet of the files from
14 the Hewlett-Packard computer at 410 Norfolk, correct?

15 A. It was generated, yes, by X-Ways Forensics, yes.

16 Q. And I just want to draw your attention to the date and
17 time information that's generated on this spreadsheet on this
18 computer. You see there's some -- some of the date and time
19 information has real, like, normal dates and times after it.

02:37 20 Do you see that? And then some of the same columns have
21 information that does not appear to be in the format of a date
22 or time?

23 A. Okay. That's what -- that's what this -- you're
24 displaying, yes.

25 Q. Well, that's what was submitted to the Court as an

1 exhibit, right?

2 A. The complete list was -- the complete list that X-Ways
3 Forensics generated was provided as an exhibit, yes.

4 Q. And that's what this is, right?

5 A. If you're looking at --

6 Q. 1145- -- 1143-005A?

7 A. Okay.

8 Q. So at least in this form, this spreadsheet could not be
9 used to verify any of the filed time data in your derivative
02:38 10 spreadsheet because it's missing --

11 A. I'm not sure all of the columns have the time and date
12 listed the way that it is but, again, we used both AD Labs and
13 X-Ways Forensics to verify the information.

14 Q. Do you know which one you used in this particular
15 instance?

16 A. I do not know which one.

17 Q. Can you explain why this particular tool generated date
18 and time information that's not comprehensible?

19 A. I don't know.

02:38 20 Q. I'm going to go now to Exhibit 1150 which is the Kingston
21 thumb drive found in the landfill that you talked about. Do
22 you remember that? Do you remember talking about that?

23 A. If you could bring up the spreadsheet again we could
24 confirm.

25 Q. Hold on. Exhibit 1145-01 -- I'm sorry -- 1150-01.

1 Now, the bulk of the files that you talked about on this
2 thumb drive were carved; in other words, they were recovered
3 from deleted space, correct?

4 A. They were either recovered or carved, yes.

5 Q. And when we see this path, "path unknown" with all of
6 that -- those numbers, et cetera, directory markers before the
7 file name, that's an indication that the file was carved,
8 right?

9 A. Using this particular software product, yes, it would tell
02:39 10 you that -- that CL is a cluster number of where that file was
11 located or started.

12 Q. And there's no way to know when the files were deleted off
13 that thumb drive, correct?

14 A. There's not. As again, with carved and deleted files,
15 it's more of access for investigative purposes than it is for
16 the date and timestamps.

17 Q. And one of the carved items retrieved from this thumb
18 drive, Exhibit 1150-09, was a rental application from Katherine
19 Tsarnaev, correct?

02:40 20 A. Yes.

21 Q. Okay. And a few pages in it includes her pay stub, right?

22 A. If that's '09, then yes.

23 Q. Let's talk a little bit more about 1475 which is the hard
24 drive seized from the street in Watertown. The derivative file
25 listing for that exhibit -- actually, rather than showing you

1 the file listing, what I think I'm going to do is go to the
2 file directory here.

3 Now, you testified last week and I think today that these
4 four folders at the top here actually existed in that form on
5 that hard drive, right?

6 A. Yes, I believe so. Yes.

7 Q. And this English paper that's still listed on the top
8 here, that actually was not visible in the hard drive as an
9 active file at the time it was seized. That, in fact, was
02:42 10 carved from having been deleted at some point in the past,
11 correct?

12 A. Yes.

13 Q. And the hard drive sort of contains a kind of greatest
14 hits collection, right? There's Awlaki materials, audio files
15 in that first folder, right?

16 A. I'm not sure what you mean by "greatest hits" but --

17 Q. Well, a lot of files that we've seen on -- that you talked
18 about from the Sony and other devices, a lot of those files --
19 a very large number of them are all here collected together on
02:43 20 this hard drive from Laurel Street in Watertown. Is that
21 right?

22 A. Can you slide the screen over so I can see the next half?

23 Q. I'm sorry. So that's a collection of Awlaki audio files,
24 correct?

25 A. Those are a collection of Awlaki files, yes.

1 Q. And there are these Russian textbooks about explosives, et
2 cetera, right?

3 A. There are Russian textbooks in there, yes.

4 Q. Well, and you remember looking at the translations from
5 the derivative file exhibit that the titles have to do with
6 explosives and munitions and that kind of thing, right?

7 A. You're going to refer to each of them specifically or do
8 you want --

9 Q. Well, as a general category. You've looked at the
02:43 10 translations of these titles in your spreadsheet, right?

11 A. Well, yeah. Do you want to make reference back to that or
12 are you asking --

13 Q. I'm trying to ask some general questions about the
14 category, the type of materials first. If you want to look at
15 the list, we can.

16 A. Well, if you'd like to ask me specifically, I can comment
17 on --

18 Q. Well, the first thing I want to do is ask as a general
19 matter this collection of DjVu e-reader files in Russian, it's
02:44 20 a collection of lengthy texts about explosives and munitions,
21 correct?

22 A. We can go through each one and look at the top page and I
23 can tell you --

24 Q. Well, your own exhibit, the derivative exhibit, contains
25 translations in the side, right, titles include "Detonation of

1 Explosive Media," "Physics of Explosion and Impact," "Blast
2 Effects of Explosions," "Initiating Explosive Substances," et
3 cetera, right? Those are the titles of those files, correct?

4 A. Yes.

5 Q. And you testified that carved artifacts of those files
6 were found on one of the thumb drives, right?

7 A. Yes.

8 Q. But it's true, isn't it, that none of these files or any
9 artifacts reflecting these files exist on the Sony VAIO

02:44 10 computer?

11 A. I'd have to go back to the information that we have, but I
12 don't have that all committed to memory. I mean, I do know
13 they existed here. If you would like to go back and look at
14 the file listing we can identify whether or not they were
15 there.

16 Q. As far as you know sitting here today it's true, isn't it,
17 or at least as far as you can recall, that these files do not
18 exist on the Sony VAIO?

19 A. I don't know that for a fact. I would have to go back and
02:45 20 look at the listing.

21 Q. You don't know?

22 A. I don't have the information to make that determination.

23 Q. Okay. Now, in addition to those materials, there's a
24 collection of *Inspire* magazines as well, right?

25 A. Yes.

1 Q. Okay. And there were also some files on the top level of
2 this hard drive that -- when it was recovered that were not
3 included in this exhibit, correct?

4 A. I think there were. I was asked to verify these to make
5 sure that they existed.

6 Q. Okay. I just want to pull out some things from the
7 complete file listing just to nail that down.

8 Pulling up a page out of 1475-02A, which is the complete
9 file listing from this drive, there were some other items at
02:46 10 the top level of the drive that are highlighted in yellow here
11 that we have seen on other exhibits but that also were on this
12 hard drive recovered in Watertown, correct?

13 A. Yes. If this is from 02A, then, yes, that is a directory
14 listing from the drive.

15 Q. So "Book of the End," "Join the Caravan," those are all
16 on, as well, the top level of this hard drive when it was
17 recovered, correct?

18 A. Apparently so, yes.

19 Q. And further down the file list you're aware that there are
02:46 20 a couple of Russian language documents also on the top level of
21 this drive when it was recovered, correct?

22 A. Yes.

23 Q. And these are documents that have Russian language
24 instructions about making explosives, correct?

25 A. I don't know that.

1 Q. You don't know what these files have?

2 A. No, I did not look in the translation for those files.

3 Q. Did anybody under your supervision at the CART team of the
4 FBI ever find out what was in those files?

5 A. Not that I'm aware of.

6 MR. CHAKRAVARTY: Objection, your Honor.

7 THE COURT: No, it may stand.

8 BY MR. FICK:

9 Q. Now, isn't it true that this hard drive retrieved on
02:47 10 Laurel Street in Watertown was formatted by Tamerlan's Samsung
11 computer?

12 A. I don't have the information to determine that.

13 Q. You don't know?

14 A. I do not have the information to determine that.

15 Q. Well, whether you have it in front of you now, do you know
16 from anything you ever did in the case whether that is true?

17 A. I don't have the information in front of me to confirm
18 that.

19 Q. Again, putting apart what you do or don't have in front of
02:47 20 you, did you ever become aware from your work on this case as a
21 supervisor of the Boston CART team whether Tamerlan's computer
22 was the computer that formatted this hard drive?

23 A. I don't have that information to be able to make that
24 determination.

25 Q. Again, I'm asking not only about today but whether you

1 ever came to know -- or whether this was true in the past?

2 A. No.

3 Q. You don't know?

4 A. I don't know.

5 Q. Do you know whether anybody else at the FBI checked?

6 A. Checked what, sir?

7 Q. Checked to see what computer formatted this hard drive.

8 A. No.

9 Q. Isn't it true that every single file and folder on this
02:48 10 hard drive is owned by Tamerlan's computer, using the "owner"
11 as used in Windows parlance?

12 MR. CHAKRAVARTY: Objection, your Honor.

13 THE COURT: Overruled.

14 You may answer it.

15 THE WITNESS: Again, I don't have that information to
16 be able to make that determination nor did I, you know,
17 validate or verify that.

18 BY MR. FICK:

19 Q. Well, whether you have it in front of you now or validated
02:48 20 it or verified it, did you ever become aware in your role as a
21 supervisor of the CART team in Boston that every single file
22 and folder on this hard drive was created by Tamerlan's Samsung
23 computer?

24 A. No.

25 Q. You never became aware of that?

1 A. No.

2 Q. Do you know whether anyone else at the FBI ever became
3 aware of that?

4 A. I'm not aware of that.

5 MR. FICK: If I may have one moment, your Honor?

6 (Counsel confer off the record.)

7 MR. FICK: I have nothing further.

8 MR. CHAKRAVARTY: Just briefly, your Honor.

9 REDIRECT EXAMINATION

02:49 10 BY MR. CHAKRAVARTY:

11 Q. Agent Swindon, you were asked several questions about
12 different pieces of information on different devices, that you
13 weren't able to recall whether that information that Mr. Fick
14 asked you was, in fact, on those devices. Can you explain for
15 the jury what the conditions are in which you go through in
16 order to verify that certain documents are, in fact, on the
17 different devices that you've talked about?

18 A. It was different for each of the different -- it was a
19 variety of devices and a variety of different types of files.
02:50 20 In they were in active space and an MD5 was available, as we
21 spoke earlier, we would do that MD5 match to verify that that
22 was there. If they were carved in recovered space, we would
23 sit and go file by file and do a visual as we did like in the
24 DjVu files. So there was -- we used a different -- a variety
25 of different information to verify the information that was on

1 the exhibits.

2 Q. And is this the kind of activity that you can do on the
3 fly when -- during cross-examination?

4 MR. FICK: Objection.

5 THE COURT: Sustained.

6 BY MR. CHAKRAVARTY:

7 Q. What are the circumstances -- what are the resources you
8 have at your disposal to do that?

9 A. Well, we have the forensic team here in Boston, and we
02:50 10 were -- I mean, the process to validate and verify took days to
11 do, 20-hour days, probably four, five days of looking through
12 every single one of the files on the exhibits. And this was
13 just a subset of the totality of all the files that were seized
14 in the case or that were a part of the forensic process in the
15 case.

16 Q. In response to one of the questions from Mr. Fick you said
17 that it's -- you weren't sure what one of the files on one of
18 the -- I think the file system record date was. Is that right?

19 A. I was actually not sure of where that information actually
02:51 20 originated from.

21 Q. Right. And at one point did you know that and just didn't
22 remember?

23 A. Again, we used a variety of different tools to verify that
24 information.

25 Q. Can I show you something that might refresh your

1 recollection?

2 A. Okay.

3 MR. CHAKRAVARTY: May I approach, your Honor?

4 THE COURT: You may.

5 MR. FICK: Can I ask to see what he's showing the
6 witness?

7 THE COURT: Show it to Mr. Fick.

8 (Pause.)

9 BY MR. CHAKRAVARTY:

02:52 10 Q. I'm handing you a note. Can you read that to yourself,
11 please?

12 A. Okay.

13 Q. Does that help refresh your recollection?

14 A. It puts the information in context.

15 Q. All right. And is that just a note?

16 A. It's just a handwritten note.

17 Q. What I've just handed you is a handwritten note?

18 A. Yes.

19 Q. With that information could you explain what the file
02:52 20 system record date was that was in that column?

21 A. The record column was the column, as we had spoken about,
22 was created by AD Labs, or was taken from AD Labs.

23 Q. And is that your memory that you're testifying from?

24 A. Yes.

25 Q. And so various tools -- different tools were used at

1 different times in order to both extract data as well as to
2 verify data. Is that fair to say?

3 A. Yes.

4 Q. And if you used two different tools to do the same
5 function, does it sometimes produce different results?

6 A. It depends on where it's pulling that information from.

7 Q. So if you're comparing data from one tool with data from
8 another tool, is that like comparing apples to oranges?

9 A. For the most part, yes. The tools are tested and
02:53 10 validated, although there are different version of the tools.
11 And, again, I would have to go back to the original tool to get
12 to the specific on that.

13 Q. Mr. Fick asked you about some of the activity that
14 occurred on the Sony VAIO computer. And when you had extracted
15 files from the Sony VAIO computer, did you make observations of
16 other files that were on that computer other than the ones that
17 you extracted?

18 A. I didn't extract the files; I just utilized the exhibits
19 and went back to the original file set in the software and
02:54 20 determined that they were there.

21 Q. And were you able to make a determination as to who the
22 user was of that Sony VAIO computer?

23 A. Based on the activity that we were preparing and verifying
24 from the exhibits that -- you know, we determined that it was
25 Jahar's laptop.

1 Q. And the fact that other devices were also plugged into
2 that laptop, how did you come to that conclusion?

3 A. Well, again, as we had spoke about before, in the registry
4 there is a report that will track all of the physical devices
5 that are plugged in through the USB ports.

6 Q. So when Mr. Fick asked you as to whether some of the dates
7 of the creation of some files on that laptop predated -- I
8 think the date that he used was September 2011, does -- from
9 the file listing, if the file listing was created -- or showed
02:55 10 that a file was created after September of 2011, could you
11 conclude as to who the likely user of that laptop was for that
12 file list?

13 A. I'm not sure. Can you rephrase the question?

14 Q. I'll rephrase. It was a bad question.

15 The complete file listing, did it show the dates that the
16 files were accessed on that computer?

17 A. It would show a created/modified/accessed in the file
18 record or born-on update.

19 Q. And you described that no good computer forensic scientist
02:55 20 would rely exclusively on the Windows information. Is that
21 right?

22 A. There are a number of different pieces of information that
23 we would draw on to make a determination.

24 Q. Okay. And could you explain just to the jury why just if
25 they see a date, that's not dispositive as to when something

1 might be accessed?

2 A. Well, it depends -- when files are created, depending on
3 where they're created, sometimes if they were created on the
4 Internet and you put a thumb drive in a computer and download
5 that file from the Internet to the thumb drive, it's never
6 really born on the computer; it could have been created
7 someplace else and then written to the thumb drive. So you
8 would have to use a number of different pieces of information
9 to determine the actual, you know, creation date on that
02:56 10 computer.

11 Q. And so the file that Mr. Fick showed you actually had a
12 creation date of October 10th of 2011. Do you remember that?

13 A. Which file? He showed me --

14 Q. I think it was the Five Ground Rules. It was a very dense
15 chart. It's not worth putting it back up on the screen, but it
16 was a very dense chart that you had to zoom in on. Do you
17 remember that?

18 A. Yes.

19 Q. And so October 10, 2011, in the complete file listing,
02:56 20 what does that mean?

21 A. What column was that --

22 Q. I think it was in the creation --

23 A. In the creation? With the X-Ways report, it would have
24 been when that was created, or created on that computer.

25 Q. So that means during the school year of 2011, that file

1 was created on the Sony laptop?

2 MR. FICK: Objection.

3 THE COURT: Sustained.

4 BY MR. CHAKRAVARTY:

5 Q. What does that tell you about the -- in relation to the
6 school year as to when that file was created on the Sony
7 laptop?

8 MR. FICK: Objection.

9 THE COURT: Sustained.

02:57 10 BY MR. CHAKRAVARTY:

11 Q. Can you conclude anything about the creation date of that
12 file on that computer?

13 A. Other than the report shows that it was that date of
14 October 11th.

15 MR. CHAKRAVARTY: Call up 1143-01.

16 Q. This was a document that Mr. Fick showed you.

17 MR. CHAKRAVARTY: Can we go down to the last page, or
18 two pages down, please? Keep going down to -- I think it's
19 January 1st. Keep going. Right there.

02:58 20 Q. So he highlighted this entry where the JTsarnaev Yahoo
21 mail account was accessed. Is that right? Do you remember
22 that?

23 A. Yes.

24 MR. CHAKRAVARTY: And so if we can go back to the
25 earlier page, Mr. Bruemmer.

1 Q. Just to clarify, this spreadsheet was generated from the
2 desktop computer that was at the residence of 410 Norfolk
3 Street. Is that right?

4 A. Can you go back up to the top of the report, please?

5 MR. CHAKRAVARTY: Page 1, please.

6 A. At 2R14. Yes, the HP desktop.

7 Q. So this showed that somebody logged into the JTsarnaev
8 Yahoo email account on that computer on January 6th?

9 A. There was a browser history record on that computer of
02:58 10 somebody logging into that email account.

11 Q. And Mr. Fick also asked you about when Tamerlan Tsarnaev
12 was not in the country, and he gave you like a six-month period
13 through July of 2012. Do you remember that?

14 A. He asked that question, yeah.

15 Q. And so all these dates that occurred before July of 2012,
16 that would suggest that it was somebody else using this
17 computer. Is that fair to say?

18 MR. FICK: Objection. Those aren't the dates on the
19 screen. The dates on the screen are 2013 dates. Oh, I'm
02:59 20 sorry. I'm on the wrong screen.

21 THE COURT: All right. Go ahead.

22 BY MR. CHAKRAVARTY:

23 Q. Sir, you can answer the question. The question was: Does
24 it mean that the user of this computer was not Tamerlan
25 Tsarnaev during that time?

1 A. It was not Tamerlan Tsarnaev.

2 Q. So all of this ESPN, MTV, all that stuff was not Tamerlan
3 Tsarnaev, right?

4 A. It was not.

5 Q. Okay.

6 MR. CHAKRAVARTY: Can we go to the next page?

7 Q. And that goes on for another page.

8 MR. CHAKRAVARTY: Go down to the next page.

9 Q. And another page. It looks like somebody's watching "Teen
03:00 10 Wolf."

11 MR. CHAKRAVARTY: Next page.

12 Q. And Netflix as well, and then "Walking Dead." These are
13 all things that that person liked to watch?

14 A. That was the Internet access that was recorded during that
15 time.

16 MR. CHAKRAVARTY: Now can we go to the file listing of
17 1143?

18 Q. So going back to 1143, we called up one of the folder
19 directories. These are some of the files that were on the
03:00 20 1143, the desktop computer in the Norfolk Street residence,
21 right?

22 A. Except for the ones that are denoted with an A, they're
23 actually the translations for the files that correspond to the
24 numbers.

25 Q. So all of the "Hereafter Series" is in there from Anwar

1 Awlaki. Is that right?

2 A. Yes, they are in that folder.

3 Q. And a number of audio files, or nasheeds. Is that right?

4 A. Can you scroll over for a second?

5 Q. In fact, some of these nasheeds were also found on the

6 1R6. Is that fair to say?

7 A. I would have to look at the verification, but I recognize
8 some of the titles from --

9 Q. Some of the titles. But until you see an MD5#, you
03:01 10 wouldn't be able to --

11 A. No.

12 Q. And there's some videos as well?

13 A. That came out of the new folder, yes.

14 MR. FICK: Object to the scope at this point.

15 THE COURT: All right.

16 MR. CHAKRAVARTY: I'm done with this.

17 THE COURT: All right.

18 BY MR. CHAKRAVARTY:

19 Q. Now, you were also asked about whether there were any
03:02 20 other computers in the Tsarnaev family household prior to this
21 desktop computer that -- whether you were aware of any other
22 computers. Do you remember that?

23 A. Yes, I was asked that question, yes.

24 Q. And going to 1557, we haven't talked much about the 2R58.

25 Do you see that?

1 A. Yes.

2 Q. What do you know about that device?

3 A. Well, from the description --

4 MR. FICK: Object to the scope.

5 THE COURT: Sustained.

6 BY MR. CHAKRAVARTY:

7 Q. Were there other devices found in 410 Norfolk Street?

8 A. There are other devices on this list that were found from
9 410 Norfolk Street.

03:03 10 Q. And with regard to the data that is on the disks that
11 you've entered into evidence, with the exception of those
12 pieces such as translations and the derivative analytical
13 products which have some titles and things on them, was
14 everything else that you brought into court actually found on
15 each of the devices that you have talked about?

16 A. With the exceptions that we spoke about this morning with
17 the titles of the corrupted files and the DjVu files that were
18 converted, yes.

19 MR. CHAKRAVARTY: That's all I have, your Honor.

03:03 20 MR. FICK: Very briefly. Just one moment.

21 (Pause.)

22 MR. FICK: Could we have the screen back to the
23 monitor here?

24 THE COURT: I'm waiting for something to come up.

25 MR. FICK: Okay. Is this the cord that's attached,

1 because it should be --

2 THE COURT: No, I have it. I'm just waiting to see
3 whether there's an image and then I'll expose it.

4 MR. FICK: Oh, I see.

5 (Pause.)

6 RECROSS-EXAMINATION

7 BY MR. FICK:

8 Q. Now, Mr. Chakravarty asked you some questions to
9 clarify -- or at least try to clarify the meaning of this
03:05 10 file -- system record date in local time, right?

11 A. Yes.

12 Q. He showed you something on a handwritten piece of paper.
13 Who wrote that?

14 A. I don't recognize the handwriting on that.

15 Q. So anyway, your answer to the question was the data from
16 the second column came from the AD Labs tool, right?

17 A. I said the record column is in AD Labs. That's what all
18 that --

19 Q. All right. But regardless of what tool we're talking
03:05 20 about, all of these tools extract information from the -- from
21 Windows and from the Windows metadata, correct?

22 A. They do. But they also could interpret it in different
23 ways.

24 Q. But ultimately there is an answer, for example, to the
25 question about when a file was created on a local computer,

1 right?

2 A. There's information available from numerous sources that
3 were used to determine when that file was created on that
4 computer.

5 Q. And if tools conflict, one would have to look deeper to
6 figure out what the conflict is and answer the question, right?

7 A. They would have to do some additional analysis to
8 determine that.

9 Q. Now, quite apart from what tool generated this file system
03:06 10 record date, my question is still which Windows artifact is the
11 file system record date?

12 A. I'd have to check with AD Labs. I don't have that
13 information sitting here today.

14 Q. Okay. So even if now you remember from the handwritten
15 note that AD Labs generated this information, you still can't
16 tell me what that information means?

17 A. Not without having the software in front of me, no.

18 Q. Okay.

19 MR. FICK: That's all.

03:07 20 THE COURT: All right, Agent. Thank you. You may
21 step down.

22 THE WITNESS: Thank you.

23 (The witness is excused.)

24 MR. FICK: May we approach for one moment, your Honor,
25 on an evidence matter?

1 THE COURT: All right.

2 (Discussion at sidebar and out of the hearing of the
3 jury:)

4 MR. FICK: In light of the witness's testimony on his
5 lack of foundation and knowledge about how the various
6 derivative spreadsheets were generated and the accuracy of the
7 data they're in, we would renew our foundation and
8 confrontation objections and move to strike all of the
9 exhibits.

03:07 10 MR. CHAKRAVARTY: I think he laid a sufficient
11 foundation for the exhibits. He individually verified each
12 entry both on the spreadsheets as well as the files that were
13 extracted, and I think it's sufficient.

14 THE COURT: I think it's sufficient for admission. It
15 goes to the weight and the jury's evaluation.

16 (In open court:)

17 MR. CHAKRAVARTY: The government calls Dr. Matthew
18 Levitt.

19 MATTHEW LEVITT, Ph.D., duly sworn

03:09 20 THE CLERK: State your name and then spell your last
21 name for the record, keep your voice up and speak into the mic
22 so everyone can hear you.

23 THE WITNESS: Dr. Matthew Levitt, M-A-T-T-H-E-W L-E V
24 as in "Victor" I-T-T.

25 DIRECT EXAMINATION

1 BY MR. CHAKRAVARTY:

2 Q. Good afternoon.

3 A. Good afternoon. Is this okay?

4 Q. Yes, please. The microphone both amplifies as well as
5 carries your voice into some other rooms.

6 Thank you for your patience.

7 Where are you currently employed?

8 A. I'm employed at a think tank called The Washington
9 Institute for Near East Policy.

03:10 10 Q. And what do you do there?

11 A. I direct a program on counterterrorism and intelligence,
12 and I'm a senior fellow there.

13 Q. How long have you been there?

14 A. On and off for several years. I've been there now since
15 2007. My first time there was 1998.

16 Q. And are you here to talk to the jury about geopolitics and
17 terrorism?

18 A. I am.

19 Q. What did you do before the Washington Institute?

03:10 20 A. Before The Washington Institute, I served as the Deputy
21 Assistant Secretary for Intelligence and Analysis of the U.S.
22 Department of Treasury.

23 Q. What does The Washington Institute do?

24 A. The Washington Institute is a non-partisan educational
25 think tank, an institute, focused on U.S. policy towards the

1 Middle East.

2 Q. Do you have a particular area of specialty?

3 A. My area of specialty is counterterrorism and intelligence.

4 Q. And what did you do at the Department of Treasury?

5 A. At the Department of Treasury, as the Deputy Assistant
6 Secretary for Intelligence and Analysis, I was the Deputy Chief
7 of the Treasury Department's intelligence branch. So it was a
8 kind of dual-hatted position. I was a member of the Senior
9 Executive Service within the Department of the Treasury and I
03:11 10 was also the deputy chief of one of the U.S. government's
11 intelligence agencies under the kind of rubric of the Office of
12 the Director of National Intelligence.

13 Q. So that's an arm of the intelligence community?

14 A. Yes.

15 Q. And before you were deputy assistant secretary, what did
16 you do?

17 A. Before that I was again with The Washington Institute
18 where I was a senior fellow in the terrorism program, directing
19 the terrorism program. And I was there for, at that time about
03:11 20 four years, until I went to the Treasury Department in 2005, I
21 think.

22 Q. So what did you do before that four-year stint at The
23 Washington Institute?

24 A. Before that I was a counterterrorism intelligence analyst
25 at the Federal Bureau of Investigation at headquarters in

1 Washington, D.C., in the International Terrorism Analysis Unit
2 focused on Middle East terrorist organizations' activities here
3 in the United States.

4 Q. Now, in addition to your work experience in this field,
5 have you had any education particularized with this field?

6 A. I have.

7 Q. Describe it, please?

8 A. I hold a Ph.D. in international relations from the
9 Fletcher School of Law and Diplomacy at Tufts here in Medford,
03:12 10 and a master's of law and diplomacy also from the Fletcher
11 School. My concentrations there were international security
12 studies, the Middle East and international conflict resolution,
13 and the Ph.D. was on the impact of terrorism on negotiations.
14 And before that I earned a bachelor's, a BA in political
15 science at Yeshiva University in New York City.

16 Q. Are you from this area originally?

17 A. I am.

18 Q. Your doctoral thesis, was it ultimately published in a
19 book?

03:13 20 A. It was.

21 Q. And what was the topic again?

22 A. "Negotiating Under Fire - Preserving Peace Talks in the
23 Face of Terror Attacks."

24 Q. So can you describe a little bit about how you crafted
25 that thesis?

1 A. Well, I spent a good chunk of time on the ground in
2 Israel, the West Bank and the Gaza Strip. It was a series of
3 case studies of terrorist attacks by Islamic extremists and
4 Jewish extremists both, and how those attacks undermined the
5 then nascent, the beginning of the Oslo peace process.

6 Q. So is that when you first started going about a particular
7 method in order to gather information about terrorism?

8 A. Yes. That was the first time I did excessive field
9 research. And that kind of primary field research is only one
03:14 10 part, but arguably the most important part of the kind of
11 research I do.

12 Q. When you went on to the FBI, the Treasury Department and
13 The Washington Institute, how did you continue to do your work
14 in the area of terrorism and geopolitics?

15 A. Well, it's different in each of those circumstances. You
16 can separate into the government service and the think tank
17 academic service when I was at the think tank or teaching at
18 the university. In government I did do some travel and I did
19 meet with others but it wasn't what I would call primary field
03:14 20 research, it was liaison, working with others, working on
21 similar issues. There is the element of exchanging ideas and
22 vetting ideas and information that is similar to primary field
23 research, but that wasn't really for research; that was for
24 case work.

25 Also in government you have ongoing education. And so I

1 took a long list of courses, some provided by the FBI, some
2 provided by other parts of the U.S. intelligence community on
3 counterterrorism, counterterrorism analysis and the like, which
4 were required in part for my advancement -- professional
5 advancement within government service, up the government GS
6 scale.

7 Q. Well, when you were deputy secretary it was no longer on
8 the GS scale. Is that fair to say?

9 A. Correct. By the time I was hired at the Treasury
03:15 10 Department that was above the GS scale and I was in the senior
11 executive service.

12 Q. In addition to your thesis which was later published, have
13 you written other books?

14 A. I have.

15 Q. Can you describe what they are?

16 A. I've written a book on Hamas which was published by Yale
17 University Press in 2006, and more recently I wrote a book on
18 Hezbollah published by Georgetown University Press here in the
19 United States and by Hurst Publishers in Europe, and now about
03:16 20 to be published by a third publisher in Spanish in Argentina;
21 and beyond those outside publications, a variety of monographs
22 published by The Washington Institute and others, peer-reviewed
23 journal articles, popular journal articles things like foreign
24 policy, foreign affairs, op-eds, policy briefs, et cetera.

25 Q. Is it fair to say you write a lot, is the axiom of publish

1 or perish? Is that true in your field as well?

2 A. I wouldn't say publish or perish, which is a term in
3 academia, but part of my job is to publish. And it's not that
4 I have to publish a certain amount of material or in a certain
5 number of places, but if you work in a think tank like the one
6 that I work in, you do it because you enjoy publishing and you
7 enjoy researching and sharing what you learn, and so I do
8 publish a lot.

9 Q. You mentioned that some of your articles appeared in
03:17 10 peer-reviewed publications. Can you explain what that means?

11 A. "Peer review" is an academic term in which an author
12 writes something and then it is reviewed by peers, other
13 experts in the field who are unknown to the author, and they
14 will be sought out by the publication or the publisher to make
15 sure that the work meets academic standards. And so the
16 university press books that I published by Yale and Georgetown
17 were certainly peer-reviewed, many of my articles are
18 peer-reviewed in that peer academic sense. And then almost
19 everything I write has some peer review for it but not all of
03:18 20 it has that kind of formal, anonymous peer review that many
21 journals and academic presses do.

22 Q. And have you also conducted peer review of others'
23 articles?

24 A. Yes, frequently. I'm often asked by university presses or
25 journals to do peer review -- anonymous peer review of the work

1 of others.

2 Q. Do you teach?

3 A. I don't right now but I have.

4 Q. Where have you taught?

5 A. I taught at Johns Hopkins University School of Advanced
6 International Studies; and also at the Zanvyl Krieger School
7 of -- graduate school; and I taught for several years as an
8 adjunct professor a variety of courses on counterterrorism.

9 Q. Do you engage in speaking engagements on your topic?

03:18 10 A. I do.

11 Q. And how frequently?

12 A. If you ask my wife, too frequently. Almost every week
13 there's several lectures.

14 Q. In fact, are you scheduled to go to one tomorrow or -- go
15 to one today for tomorrow?

16 A. I am.

17 Q. Where is that?

18 A. Berlin.

19 Q. How often do you do international lectures?

03:19 20 A. It varies but it can be frequently, so last week I gave
21 several lectures in Europe, this week I'm scheduled to give
22 several more in Europe. It can be abroad, it can be domestic.
23 Living in Washington, which is the heart of policymaking, many
24 of my lectures are domestic and don't require travel at all.

25 Q. Have you testified before Congress?

1 A. I have.

2 Q. About what?

3 A. International terrorism, illicit finance issues, sanctions
4 issues. Most of the testimony has been about various aspects
5 of international terrorism.

6 Q. Have you testified in other cases in court?

7 A. Sorry. I'm getting over a cold. I have.

8 Q. How often?

9 A. I've done it probably a few dozen times. Two or three
03:19 10 dozen times total.

11 Q. Were you qualified as what we call an expert witness in
12 those areas?

13 A. Every time.

14 Q. Has your work been cited by other courts?

15 A. I'm sorry. Can you --

16 Q. Has your work been cited by other courts?

17 A. It has.

18 Q. Can you name some?

19 A. Some of my work was cited by the Supreme Court in the
03:20 20 Humanitarian Law Project, a case which upheld the material
21 support statute. That's the most prominent that comes to mind.

22 Q. Have you received awards and recognitions for your work in
23 this field of terrorism geopolitics?

24 A. I have.

25 Q. Can you give a very brief overview?

1 A. I received numerous awards and commendations for my work
2 in government at the FBI, and things like the Exceptional
3 Service Award for my work at the Treasury Department. I've
4 received Speaker Specialist Awards by the State Department,
5 selected to be sent by the State Department to give lectures
6 abroad on behalf of the local U.S. embassy; selected by CNN as
7 an up and coming thinker. There are a host of others.

8 Q. Do you continue to consult with government agencies?

9 A. I do.

03:21 10 Q. And how about non-governmental agencies, or NGO's as we
11 call them?

12 A. Yes.

13 Q. And do you consult with media outlets?

14 A. Frequently.

15 Q. When you work on a criminal case, what do you do in those
16 cases?

17 A. I review the material that is provided, so the case
18 material, and I might put that in context, either historical
19 context or context of issues that come up in the context of
03:21 20 that case. Every case is different. Some cases require me to
21 review a tremendous amount of material specific to that case,
22 some very little.

23 Q. And have you worked as an expert witness in cases in other
24 countries as well?

25 A. I have.

1 Q. What other countries?

2 A. France, Scotland, twice in Denmark, and Canada.

3 Q. And for your role in this case, were you asked to write an
4 expert report?

5 A. I was.

6 Q. Okay. Can you describe what that is?

7 A. An expert report is the report of the hired expert
8 witness, in this case me, laying out the findings on the issues
9 that the -- in this case prosecution, although it would be the
03:22 10 same if I was called by defense, ask the expert to opine on.
11 That can be history as context, it can be terrorist trends as
12 context. And then it can also, of course, be analysis of some
13 of the material that was provided to me specific to the
14 material in this case.

15 Q. And have you testified in both civil cases as well as
16 criminal cases like this one?

17 A. I have.

18 Q. And did you do a report in this case?

19 A. I did.

03:23 20 Q. And what was the purpose of writing a report versus just
21 testifying?

22 A. It's for me to be able to kind of make sense of all the
23 material that's being provided to me and for me to be able to
24 provide context for the case for the lawyers who have hired me,
25 in this case the prosecution.

1 Q. Describe the methodology you use when you analyze evidence
2 for purposes of testimony to a jury.

3 A. I have to take the evidence at face value. I'm in no
4 position to be able to vet it, but I'm in a position to be able
5 to comment on it, put it into context -- the larger context of
6 other material like it that I've come across in my own
7 research, again, historical context, the context of different
8 themes, different trends, different modus operandi. Is this
9 something that is unique? Is this something that is common?

03:24 10 Does this make sense? Does it not make sense? Does it have
11 historical precedent? Who are key individuals who might have
12 come up in reference, key ideas that might have come up, terms
13 to help explain those for a jury that maybe doesn't spend all
14 of its time focused on these issues.

15 Q. And did you examine some of the evidence -- did the
16 government provide you with some of the evidence in this case
17 to ask you to do just that?

18 A. Yes.

19 MR. CHAKRAVARTY: Your Honor, at this point I would
03:24 20 ask that the Mr. --

21 THE COURT: Let me just see you at the side for a
22 minute.

23 (Discussion at sidebar and out of the hearing of the
24 jury:)

25 THE COURT: I don't know whether you need to renew it

1 to preserve it but I'll give you an opportunity to renew your
2 objection.

3 MR. BRUCK: Oh, thank you. I would just like to renew
4 the objection as made in a motion in limine that the Court
5 denied today, and that particularly goes to the background of
6 the various authors and figures, jihadi or radical Islamic
7 figures who are referenced in Dr. Levitt's report and I gather
8 are about to be referenced in his testimony. And the -- and we
9 have a continuing -- wish to have a continuing objection to the
03:25 10 biographies of those figures and to the people that
11 influenced -- there's a whole back story of each of these
12 individuals on the grounds that there has been and will be no
13 showing that the defendant was aware of any of them, and even
14 if he was, we think under 403, extraordinary prejudicial effect
15 of essentially putting in the history of Islamic terrorism in
16 the 21st century and burdening this defendant with everything
17 that has gone on since 9/11 and before and after is far -- the
18 prejudicial effects far outweighs its probative value. We also
19 think that it injects an arbitrary factor in violation of the
03:26 20 Eighth Amendment in a capital case, and for the rest of it I
21 would like to rest on our papers.

22 THE COURT: Okay. As I've indicated, I think the
23 testimony is admissible. I do think 403 is an important
24 consideration, and I trust the government won't step too far on
25 this, but it is relevant.

1 Let me also say for -- a different reason for calling
2 you over here, I've never been attracted by the idea of
3 declaring an expert to be an expert because it has always been
4 my view that it depends on what he gets asked. So I've done it
5 already on a couple of other experts because I just didn't want
6 to offer the resistance, but this guy may be different so I
7 will not give him blanket qualification. But I suspect within
8 the scope of things in his report, he is qualified to testify
9 as an expert.

03:27 10 MR. CHAKRAVARTY: Thank you.

11 MR. WEINREB: Your Honor, if I may clarify something,
12 I understand the Court's ruling is a denial of the defense
13 motion in limine that as a categorical matter everything should
14 be excluded on either 401 or 403 grounds, but I don't
15 understand the meaning of a continuing objection of relevance
16 on 403 grounds. I don't think that we should assume that every
17 single question has to be objected to --

18 THE COURT: No, I agree with that. I guess when I was
19 talking about a continuing, I was thinking of his
03:28 20 qualifications to testify under Rule 702. That was the context
21 of that. Other matters I think are more appropriate.

22 MR. BRUCK: So I will have to object each time he goes
23 into these back story details about -- I mean, we gave --

24 THE COURT: No, I don't -- I mean, to the extent he
25 wants to talk about a particular source of jihadi

1 encouragement, I don't think you have to object to each
2 question.

3 MR. WEINREB: Yeah, I guess the motion in limine
4 addresses categories of evidence. And the Court has denied it
5 and at the same time cautioned the government to be prudent in
6 its questioning. But the parties and the Court could all be of
7 different minds about what crosses the line into irrelevance of
8 403, and without an objection we're not going to have a ruling
9 and the defense will be in a position to say that there's no
03:29 10 plain error review here because it has a standing objection to
11 every single question being asked on relevance of 403 grounds.
12 That's just not appropriate.

13 The defense may wish that it didn't have to get up and
14 object to things, but that's the way trials work so the Court
15 can focus on a particular question. And whether it, in fact,
16 asks for irrelevant or unduly prejudicial evidence, there's no
17 way to make that ruling one way or the other with respect to an
18 entire line of questions.

19 THE COURT: Well, I think there are some categorical
03:30 20 qualities to what I meant by the ruling, which is he can
21 testify about the history of recent terrorist activity,
22 particularly the encouragement of jihadi actions by particular
23 prominent figures. I don't think every time a question gets
24 asked about al-Awlaki, that he has to stand up and object to
25 that.

1 MR. WEINREB: Well, I understand. So I understand
2 there's a continuing objection to certain categories of
3 evidence, but if it is the view of the defense that the
4 government has gone beyond what the Court has permitted, then I
5 think it needs to get up and object so the Court can decide if
6 it's on this side of the line or the far side of the line,
7 especially since many questions may be in a blurry area.

8 THE COURT: Okay.

9 MR. BRUCK: Well, it's going to become unwieldy. And
03:30 10 I don't know what the government intends to do, but his
11 report -- Dr. Levitt's report goes into areas like -- there's
12 al-Maqdisi. He's a Jordanian jihadi figure -- was the mentor
13 to al-Zarqawi, the head of al-Qaeda in Iraq. And of course
14 people will recall the American war to try to -- and they were
15 eventually successful in killing al-Zarqawi.

16 Now, you know, to our way of thinking, that way
17 crosses the line. It's -- that's the back story. Now, do
18 I -- you know, I feel like we should have a continuing
19 objection to things like that.

03:31 20 THE COURT: It's that kind of evidence. But I
21 think -- I guess understanding that I will permit it to some
22 degree, I guess the 403 objection has to be that you think it's
23 gone beyond the degree to which I will permit it. I don't know
24 how else to say it.

25 MR. BRUCK: I would just object. I would like the

1 record to reflect, if it may, when I make a 403 objection, I
2 intend that to include an Eighth Amendment constitutional and
3 due process constitutional objection, this being a death
4 penalty case especially. I mean, I could recite the entire
5 legal litany each time I get to my feet but I would rather just
6 have that be a shorthand for Fifth and Eighth Amendment and 403
7 when I say "403," if that satisfies the Court.

8 MR. WEINREB: That I think isn't problematic as long
9 as we have the objections and the rulings in real time so the
03:32 10 government can perhaps rephrase a question, ask a different
11 question --

12 THE COURT: Yeah.

13 MR. WEINREB: -- or knows that it's now going into an
14 area that the Court thinks has crossed the line; otherwise, we
15 have no idea. We could create an error without even knowing
16 it.

17 MR. BRUCK: One last thing. I trust your witness is
18 on a short leash about this and will not simply give -- in
19 response to a simple question about al-Maqdisi, will give the
03:32 20 entire back story without another question, because then it's
21 extremely hard to know where you're going.

22 MR. CHAKRAVARTY: We've been very sensitive to
23 Mr. Bruck's concerns from the motion in limine. I don't
24 anticipate there will be many back stories at all. Those back
25 stories that will be testified about are going to be relevant

1 to people like Awlaki, like Maqdisi, other people who are the
2 authors of the documents on his computer that further suggest
3 were both either accessed or otherwise relevant to his actions
4 that he later cited. There's going to be a lot of reading from
5 those documents and not a lot of -- you know, maybe a sentence
6 or two into background about those people.

7 MR. MELLIN: Your Honor, while we're here, may I
8 suggest that when we take the break for lunch, that everyone be
9 given a little bit of leeway to talk to this expert, if we get
03:33 10 a sense of -- 10 or 15 minutes, kind of where he -- how he's
11 handling the situation and how best to avoid these concerns?

12 THE COURT: Do you have a problem with that?

13 MR. BRUCK: Do you have a problem with my being
14 present for that?

15 MR. MELLIN: No.

16 MR. BRUCK: All right. Then let's do that.

17 MR. CHAKRAVARTY: Not for the admonishment, no.

18 THE COURT: I'm not sure that I understood what the
19 answer was. But, yes, to encourage him to stay focused on the
03:34 20 question and answer the question in a direct way, not expand.

21 (In open court:)

22 MR. CHAKRAVARTY: May I proceed, your Honor?

23 THE COURT: Yes, please.

24 BY MR. CHAKRAVARTY:

25 Q. Dr. Levitt, thank you for your patience again. We weren't

1 talking about you. Not the whole time.

2 A. That's a shame.

3 (Laughter.)

4 Q. Did you examine some evidence in this case before you
5 drafted your expert report?

6 A. I did.

7 Q. And before you prepared for your testimony today?

8 A. I did.

9 Q. And did we go through some of the scope of what I would be
03:35 10 asking you today?

11 A. Yes.

12 Q. And just to be clear as to what your qualifications are,
13 do you read or write Arabic?

14 A. I do not.

15 Q. And the materials that you reviewed, what language were
16 they in?

17 A. Most of the materials that I reviewed were in English.
18 There were a small number of materials that I reviewed for the
19 report that were in Arabic which I had to go through with
03:35 20 someone who could help me understand the Arabic. But the vast
21 majority of the materials were in English. There were some
22 materials in -- I think there was at least one other language
23 which I communicated back to you I couldn't review because I
24 didn't speak the language. It wasn't Arabic.

25 Q. And you haven't reviewed all of the evidence in this case.

1 Is that fair to say?

2 A. No, I have not.

3 Q. So specifically, did I provide you with evidence that I
4 told you was from the defendant's computer?

5 A. Yes.

6 Q. Now, Dr. Levitt, can you explain to the jury what the
7 global jihad movement is?

8 A. The global jihad movement is an idea. It's not a
9 movement, per se. It's not a group that has an office. It's
03:36 10 not led by a committee or an individual. It's the idea of
11 like-minded people who are pursuing in their mind this idea of
12 a global jihad, and it will include people from different parts
13 of the world who even disagree with one another on certain
14 precepts, theological ideas, tactical ideas. It will include
15 people who say that their implementation, their
16 operationalization of these ideas should be local, in their
17 home countries, and others will say, no, it should be done more
18 globally.

19 But the idea behind it that there is a need for a global
03:37 20 effort on behalf of Muslims to unite as a nation among the
21 Arabic, to defend itself, to do that through acts of violence,
22 this is something that has a continuum going back several
23 decades now through to today.

24 And there are things that have been constant in terms of
25 some of the core precepts, some of the key pieces of ideology,

1 some of the key ways that it manifests itself, and there are
2 things that have changed over time in terms of geographic
3 focus, in terms of emphasizing this ideological precept more
4 than that ideological precept.

5 So it is accurate to say that there is, especially in the
6 minds of its adherence, a global jihadi movement. You have
7 people who, whether they're talking to other human beings or
8 they're reading or hearing or watching this on various types of
9 media on their computer screens, feel that they are part of a
03:38 10 large, singular following, like-minded followers. But that
11 doesn't mean we're talking about an organization incorporated
12 or an office or anything like that.

13 Q. So do you have to be in a terrorist group to be part of
14 the global jihadi movement?

15 A. No, by definition you don't. It can and certainly does
16 include terrorist groups, and it can include individuals, what
17 we describe today as home-grown violent extremists or lone
18 offenders who will feel that they are part of something bigger
19 and will be acting in concert with and on behalf of something
03:39 20 bigger but don't have to sign up, don't carry a membership
21 card.

22 Once upon a time you really had to travel to meet with one
23 of these groups, to get trained by one of these groups, to meet
24 people. Nowadays the world is flat through social media. You
25 can get your indoctrination, you can get your motivation, you

1 can get your schooling and skill set just online and you don't
2 have to have traveled, or even necessarily communicated with
3 anybody, in order to be able to carry out an action that in
4 your own mind would be in concert with those other people.

5 Q. So what ties adherence to the global jihadi movement
6 together?

7 A. Ideas. Ideology both in terms of the things that motivate
8 them, the ideas that motivate them, the things in which -- for
9 which they think they're acting on behalf of, and then also
03:40 10 frequently the how; the what they do. So you don't have to
11 have met with an individual or belonged or signed up or pledged
12 an oath, a pledge of loyalty or allegiance, in order to believe
13 that there is a requirement to engage in militant jihad; that
14 the primary type of jihad is not what is usually called the
15 more important jihad, which is self-improvement, but rather,
16 the lesser jihad of militancy; that this is to be done on
17 behalf of this larger Muslim nation, the ummah; that one's
18 affiliation really is to that ummah and not to any -- this
19 Muslim nation, not to any local ethnicity, nationality
03:40 20 community; that there are rewards for engaging in this
21 behavior, rewards of a national level, this kind of altruistic
22 doing on behalf of others who can't, coming to the defense of
23 the people who can't defend themselves. And also, a more
24 selfish deliverance: Forgiveness of past sins, getting into
25 heaven. Not just heaven but the highest levels of heaven.

1 And so these types of ideas also remove disincentives. So
2 for most people the idea of killing innocents is forbidden, but
3 what if through this ideology it's no longer forbidden; in
4 fact, it's permitted. And what if it's no longer just
5 permitted but it's also praiseworthy. And what if it's not
6 only praiseworthy, but it's also a personal obligation upon you
7 if you want to be a good member of this community, this ummah,
8 if you want to be a good Muslim. So you've now gone the
9 spectrum, from killing innocents is not okay all the way to
03:42 10 this is something that's not only okay, it's not only
11 praiseworthy, this is something that is incumbent upon you.

12 And so these types of ideas have motivated a whole host of
13 different types of characters, from people who operate as
14 groups to people who coalesce together as networks that may
15 have some tangential connection to a group or may not, to
16 individuals, to lone offenders.

17 Q. So there are some concepts there that I just wanted to
18 have you explain a little bit to the jury. I think you started
19 to explain what jihad was. Are you a religious scholar?

03:42 20 A. I'm not.

21 Q. Okay. So what is the basis of your understanding of these
22 concepts?

23 A. Well, one of the things that I've developed expertise in
24 in the course of my studying terrorism studies is the concepts
25 in the process of radicalization. Arguably, one of the most

1 important issues we're dealing with today: How is it that
2 people are being radicalized around the world to want to go out
3 and carry out acts of terrorism in whatever venue that may be:
4 at home, today in Syria, whatever it is.

5 And within that area of study I've had to learn a lot of
6 different things, from things that relate to social work and
7 psychology, because one aspect that drives people is either
8 local grievances, particular circumstances to an individual,
9 anger over international grievances, foreign conflicts; but
03:43 10 then the other half of the equation is ideology. And the fact
11 is that Islam is not terrorism full stop, and the fact is that
12 all religions have the capability for extremism, but the fact
13 is that today the radicalization that we are seeing kind of as
14 almost a global insurgency is happening in the name of Islam;
15 not in the name of the Islam practice by the vast majority of
16 Muslims, but it's happening in the name of Islam, and the
17 twisting of certain Islamic concepts.

18 And so I've spent a tremendous amount of time studying
19 these to have a better understanding, not as a Muslim scholar
03:44 20 to be sure, but as a scholar of terrorism studies, how are
21 these being used and implemented to radicalize, motivate and
22 then operationalize, dispatch and send people to engage in
23 these types of acts of terrorism.

24 Q. So you explained that there was a kind of a greater jihad
25 and a lesser jihad. How do adherence to the global jihad

1 movement refer to jihad?

2 A. So the greater jihad is traditionally the jihad of one's
3 self, and that is self-improvement, becoming a better person,
4 and that can be as behaviorally, just being a better person,
5 being kind to one's neighbor and family, and also becoming a
6 more pious person, you know, giving more charity, making the
7 pilgrimage, et cetera. And these are praiseworthy.

8 The lesser jihad traditionally was militant, was a violent
9 jihad. And it can be done in a defensive manner and it can be
03:45 10 done in an offensive manner. The radicalizers within this
11 global jihadi movement over a period of decades -- and
12 different individuals have done it can differently, but one of
13 the common themes is their argument that, in fact, it is this
14 lesser jihad, the jihad of militancy, which is actually the
15 more important, the more religiously obligatory, the more
16 impactful; that if you do this, and you do this violent jihad
17 faithfully and with proper intent, not to enrich yourself or
18 not to become a famous person but for the right reasons, then
19 it can be even more powerful than someone who, say, was a pious
03:46 20 person all their life and prayed five times a day or
21 what-have-you, trying to promote this idea that violent jihad
22 is something primary, violent jihad is something core to the
23 practice of a good Muslim and that it is a personal obligation.

24 There's this idea within Islam of something that is the
25 obligation of a community, which means not every single

1 individual has to do it, and something that is a personal
2 obligation, that is the obligation of each individual. And the
3 jihadi ideologs go to great lengths to say that this militant
4 jihad, this is an obligation on the individual. So if you,
5 individual, want to be a good practicing Muslim, this is
6 something you need to do, and you can't shirk that
7 responsibility.

8 Q. You mentioned something called the ummah, U-M-M-A-H. What
9 is that?

03:47 10 A. The nation. The Muslim nation.

11 Q. Now, is there a relationship between the global jihad
12 movement and the United States of America?

13 A. Not a friendly one. So the United States has for many
14 years now been at the receiving end of much of the anger of a
15 global jihad movement and for a variety of reasons. Ideologs
16 within this milieu have described the United States as the
17 force backing regimes, in the Middle East in particular, that
18 were seen to be totalitarian, bad to their citizens, and
19 insufficiently Islamic. And that the way, for example, to
03:48 20 defeat Mubarak in Egypt back in the day, or others in other
21 Arab countries or Muslim countries, Muslim-majority countries,
22 would be not necessarily to try and take the fight to those
23 governments which were very heavy-handed, but to take the fight
24 to the United States, their backer. And if the United States
25 were to withdraw its backing for these countries, they would

1 fall like dominoes.

2 There's anger over the United States and its perceived
3 interventions against Muslims around the world in conflicts
4 around the world. So there will be anger about the United
5 States in Iraq, the United States in Bosnia, the United States
6 support for Israel in the context of Israeli-Palestinian
7 conflict, et cetera, and it comes down to a foundational idea
8 that there's a war between the Muslim ummah and the West with
9 the United States kind of leading the West.

03:49 10 THE COURT: Mr. Chakravarty, we're just about at one
11 o'clock. I think perhaps we'll take the lunch recess at this
12 point.

13 THE CLERK: All rise for the Court and the jury. The
14 Court will take the lunch recess.

15 (The Court and jury exit the courtroom and there is a
16 recess in the proceedings at 1:00 p.m.)

17 THE CLERK: All rise for the Court and the jury.

18 (The Court and jury enter the courtroom at 2:09 p.m.)

19 THE CLERK: Be seated.

04:59 20 THE COURT: Go ahead, Mr. Chakravarty.

21 BY MR. CHAKRAVARTY:

22 Q. Good afternoon, Dr. Levitt.

23 A. Good afternoon.

24 Q. Can you explain how the global jihad movement has evolved
25 over the last decade?

1 A. The global jihad movement has evolved over several
2 decades, but over the past decade in particular we've seen
3 really tectonic changes, that is to say, you know, about ten
4 years ago the biggest threat on the horizon was an organized
5 al-Qaeda. But with several years of international
6 counterterrorism efforts, al-Qaeda itself began to almost break
7 apart, and with the rise of social media and kind of the
8 flattening of the earth and the ability to communicate via
9 social media around the world you had two phenomena: The first
05:00 10 is the rise of al-Qaeda affiliates, both formal affiliates,
11 that is to say, recognized by al-Qaeda, and others, kind of
12 al-Qaeda want-to-be affiliates, groups that saw themselves like
13 al-Qaeda, aspired perhaps to maybe officially be part of
14 al-Qaeda, but whether they were officially or not were of that
15 same ilk in different regions.

16 The ones that were truly al-Qaeda franchises would have
17 their focus in a region. So, for example, al-Qaeda in the
18 Arabian Peninsula, in Saudi Arabia and Yemen; al-Qaeda in
19 Islamic Maghreb in North Africa; the Shabaab group in Somalia.
05:01 20 And they would certainly do things locally, but they would also
21 have interests in things international.

22 Other groups that were more aspired to be part of
23 al-Qaeda, some of which had asked to join but hadn't received a
24 response, others that hadn't even asked, they might be more
25 local in their activities than, say, the Sinai desert or other

1 places. With time, again, more crackdowns from --
2 counterterrorism crackdowns by the international community and
3 the rise of social media, what we found is a new phenomenon
4 that in some ways is more difficult to contend with. I won't
5 necessarily say more dangerous, because it's not quite as
6 capable to carry out kind of spectacular attacks, but much
7 harder to identify and stop, and that is the home-grown violent
8 extremists, HVE, or the lone wolf or lone offender, as I prefer
9 to call it. And this can be a lone individual or it can be a
05:02 10 lone small group of individuals.

11 These are much harder to stop -- identify and stop because
12 they don't necessarily engage in the types of activities that
13 set off the trip wires that security intelligence,
14 counterterrorism entities have placed to try and figure out
15 who's doing what; in particular, three: travel, communication
16 and moving and receiving money.

17 So if they're not setting off these trip wires, if they're
18 not going to bring themselves to the attention of law
19 enforcement by virtue of traveling to a place that terrorists
05:03 20 are known to go to, or communicating with people who are known
21 or suspected of engaging in terrorist activity, or sending
22 funds to or receiving funds from people who are known or
23 suspected of being involved in terrorist activity, they stay
24 under the radar and they're much harder to identify.

25 And many officials, both here in the United States and

1 abroad, have articulated this concern, of just how hard it is
2 to deal with these types of home-grown violent extremists.
3 They won't necessarily have the capabilities to do a
4 spectacular attack, but the expectation is -- and the President
5 himself said this -- that over time they're going to be more
6 frequent. And since terrorism at the end of the day is not
7 necessarily about killing the maximum amount of people,
8 wounding the maximum amount of people alone, it's also about
9 getting media attention, it's also about literally terrorizing
05:04 10 society, making people afraid, this can be a very, very
11 effective means of accomplishing that goal.

12 Q. And so in the last ten years, has this decentralized way
13 become the strategic choice of the global jihad movement?

14 A. So this decentralization is a fact of life, and it means
15 that it's not like the old school terrorism has gone away.

16 Al-Qaeda in the Arabian Peninsula, for example, has attempted
17 to carry out multiple attacks targeting the West over the past
18 few years. There are other al-Qaeda elements, one based out of
19 Syria today that we're very concerned, is plotting out of
05:04 20 Syria -- not attacks in Syria but attacks in the United States
21 and in Europe. That kind of organized al-Qaeda or al-Qaeda
22 franchise model still does exist. But on top of that, the much
23 more immediate threat and phenomenon that we're seeing more
24 frequently is this phenomenon of the home-grown violent
25 extremist, the individual or the small group.

1 Q. So is there a command and control relationship between the
2 individual, the small group and one of these terrorist
3 organizations?

4 A. There need not be, and in most of the cases we're seeing
5 today there isn't. Again, that doesn't mean that there can't
6 be. And over the past few years there have been some
7 instances, although at this point they're really more of the
8 exception, where there is I wouldn't say full command and
9 control, but interaction between senior, say, al-Qaeda or other
05:05 10 terrorist group leaders and operatives trying to do things
11 abroad.

12 Most of the plots we're seeing nowadays are not like that.
13 They do not have command and control. And in some cases there
14 is some communication, in many cases there is no communication,
15 and the -- as if command and control authority, say al-Qaeda,
16 will simply log the attack after it happens, this was people
17 following on our call to go do what has to be done. You don't
18 have to come to a foreign battlefield to do it. You're welcome
19 to if you want to, but you can also do it at home, especially
05:06 20 in the West. And that's become a major theme of radical
21 propaganda: Do it at home.

22 Q. And are the terrorist organizations that are part of the
23 global jihad movement, are they monolithic in the sense of
24 their encouragement of this type of activity?

25 A. They're not monolithic. They encourage this type of

1 activity. They also encourage people to travel to other
2 places. A common refrain is: Come here. But if you don't
3 come here, do something at home.

4 We discussed earlier this personal obligation, right? You
5 can't shirk this responsibility. If you still are intent on
6 living amongst unbelievers, then at least you've got to do what
7 you've got to do: terrorist attacks at home. They welcome you
8 to come and fight somewhere else too. And this is not only
9 al-Qaeda; now the so-called Islamic state or ISIS --

05:07 10 MR. BRUCK: I'd object to bringing in organizations
11 that have nothing to do with --

12 THE COURT: As a general background I think it's all
13 right. Go ahead.

14 BY MR. CHAKRAVARTY:

15 Q. You were talking about ISIS. That we've all heard of,
16 ISIS. How does that relate to the global jihad movement?

17 A. ISIS is the latest incarnation of this global jihad
18 movement, a group that in the region in the Middle East is
19 fighting with al-Qaeda and yet it won't be uncommon to see
05:07 20 people who have a primary affiliation with al-Qaeda and people
21 who have a primary affiliation with ISIS somewhere in diaspora
22 doing something together as we've seen in just the past few
23 weeks, in one instance.

24 ISIS, like al-Qaeda, has glossy magazines, and even better
25 than al-Qaeda very impressive online radical and radicalization

1 literature. And it too explicitly says: Come. But if you
2 don't come -- you don't have to come -- just do something back
3 home.

4 Q. So is there a common narrative to these global jihadi
5 groups?

6 A. Well, as we discussed before, there's plenty of things
7 that divide them on theological points, on points of strategy.
8 What should you do first? Should you target the near enemy;
9 say, for example, the government of Egypt first, or should you
05:08 10 target the far enemy, say the government of United States
11 first, or could they be done concurrently?

12 Where there is this commonality is in the motivational
13 ideology, the idea that there is a personal obligation upon
14 every good Muslim, every member of this ummah to this Muslim
15 nation to do their part for which they can be rewarded both
16 altruistically, that is to say, giving of themselves on behalf
17 of this ummah, defending those who are defenseless. And you
18 can do that -- you know, you can defend people in, you know,
19 some foreign conflict at home if you're in the United States by
05:09 20 targeting the United States, which is this head of the snake as
21 it were, but you also get this personal, if you will, selfish
22 individualized benefit which is absolution, deliverance, entry
23 into the highest levels of paradise.

24 Q. So is there a particular demographic or particular traits
25 of people that this narrative attempts to appeal to?

1 A. Well, as I said earlier, you know, Islam does not equal
2 terrorism full stop. I can't stress that enough. But this
3 particular set of radicalized ideologies is an extremist
4 variation of Islamic concepts. And so it is targeted towards
5 Muslim youth -- youth in particular. Not only Muslim but
6 particularly Muslim youth. Beyond that, you know, there is no
7 single profile. We have people who have been radicalized who
8 were experiencing poverty and lack of opportunity, and we've
9 had people who were very successful professionals, engineers,
05:10 10 doctors, you know, people who had money, people from the West,
11 people from the Middle East, people who seem to be quite well
12 integrated into their societies, people who are not at all well
13 integrated into their societies.

14 The bottom line is, the way I describe it is there are two
15 general baskets into which the issue sets fall, and it's like a
16 salad bar of options. If you go to the salad bar and I go to
17 the salad bar, we're going to, odds are, pick slightly
18 different salads. What makes you laugh and me laugh and you
19 cry and me cry is going to be slightly or very different.
05:11 20 We're all individuals.

21 It's the same for radicalization. There tends to be
22 something that provides a cognitive opening. Some combination
23 of local grievances can be -- I just had a case last week -- my
24 girlfriend dumped me; to feeling discrimination; to feeling
25 pulled by different types of identity crisis: Am I primarily,

1 saying this country, American? Am I primarily Muslim? Is my
2 primary national ethnic identity or national identity being an
3 American? Is it being part of the Muslim ummah? Do I belong?
4 Those types of local grievances.

5 I'd also include in that first box the international
6 grievances: concern about foreign conflicts, Palestine, Iraq,
7 Chechnya, this type of thing. Those types of issues create in
8 an individual a cognitive opening into which dangerous ideas
9 can then fill the gap.

05:12 10 So there's going to be some component of grievance,
11 there's going to be some component of ideology, and for every
12 single person the division of how much grievance and how much
13 of which grievance and how much ideology and what type of
14 ideology -- not only how much ideology, but how much exposure
15 to ideology, over how much time, over how many medium, by
16 individuals, not by individuals, online only, will be
17 different, and we've seen cases that can fit anywhere across
18 that spectrum.

19 Q. So are you talking about the process of radicalization?

05:12 20 A. Yes.

21 Q. What is radicalization?

22 A. Radicalization is the process by which an individual
23 adopts extremist or radical ideas and then possibly is
24 mobilized to operationalize, to do something about them. You
25 can, of course, have someone who adopts radical ideas and

1 doesn't act on them, right? And ideas, even radical ideas, are
2 protected in this country. So our concern is ultimately about
3 action.

4 Within the -- within the study of radicalization there are
5 two schools of thought, however. One says: Yes, ideas are
6 protected, but we have to be concerned or at least start being
7 concerned when people start digesting really radical ideas
8 which are about violence, whether or not they actually then
9 have or have yet acted on it, prefer that they might
05:13 10 potentially very quickly. And others say: No, dangerous ideas
11 are protected in this country and we're quite proud of that,
12 and so the only thing we're concerned about is action.

13 What's absolutely clear is that for an individual who has
14 gone through a process of radicalization and mobilization and
15 operationalize those and has carried out an act of violence,
16 that is, by definition, full-fledged radicalization. This is
17 not someone who maybe is contemplating radical ideas like you
18 might contemplate, you know, you might study fascist ideology
19 in college; this is someone who has then acted on them. And so
05:14 20 by then any definition of either of those two schools of
21 thought, this would obviously be a case of concern.

22 Q. And how does radicalization take place?

23 A. Yes.

24 (Laughter.)

25 A. There is no one model for how radicalization takes place.

1 Every single one of us is an individual. Our experiences are
2 different. What makes us happy and makes us angry is different
3 and, therefore, every single case of radicalization is going to
4 be at least a little bit different.

5 And you'll be able to find cases that are similar to one
6 another, and that may be interesting to look at, but at the end
7 of the day it's the combination of these two baskets:
8 grievances, local and international; and some type of ideology.

9 Now, mind you, of course, it doesn't have to be a
05:15 10 deviation of Islam. It doesn't have to be radical Islamist
11 ideology, right? We've seen a rise of white supremacist
12 activity in this country since we elected an African-American
13 president, right? But that combination of grievance and
14 ideology. Some thing, either someone or some -- now in the age
15 of social media and digital media, someone doesn't have to be
16 in person, but someone has to be able to kind of hold your hand
17 and pull you across that dividing line to the point where you
18 mobilize and actually do, operationalize, these ideas.

19 Q. When you say "someone," what do you mean?

05:15 20 A. There is a radicalizer in every case that we'll see. It
21 won't necessarily be someone with a clear-cut name. The
22 radicalizer can be the totality of things that someone has
23 heard and read and watched online; it could be exposure to
24 individuals; it could be long treatises; it could be
25 140-character tweets. In all likelihood, it will be some

1 combination of that and everything in between it.

2 Our concern is that, you know, unlike, say, ten years ago
3 or so when much of the material that was put out there online
4 were these mostly theological treatises written in language --
5 if it was written in English at all, and it wasn't particularly
6 accessible. Nowadays you have glossy magazines; Twitter
7 accounts; Facebook accounts; treatises; videos; chants,
8 nasheeds, which are like devotionals -- which can be devotional
9 in a purely, you know, religious way, but many radical Islamist
05:17 10 groups use them to -- in singing a song to some type of
11 percussion music promoting dangerous radical, explicitly
12 violent ideas -- all these types of media are accessible today
13 and it's removed barriers to entry.

14 You don't have to be able to become an Islamic
15 jurisprudent, you don't have to wade through really complicated
16 writings of people who are a whole lot older than you and whose
17 English maybe isn't so great. You can hear, you can read, you
18 can watch people who speak your language -- not just English
19 but American English; not just American English but colloquial
05:17 20 English -- and put things in terms that you use every day and
21 that removes barriers to entry.

22 Q. Is there a way to measure how radicalized somebody is?

23 A. Lots of people have tried. The simple answer is: Until
24 someone actually acts, there's complete room for debate, all
25 right? There's no quantifiable, this is a 3.2 radicalization.

1 MR. BRUCK: Your Honor, if you'd please, I'm going to
2 object to any further testimony along this line without a
3 showing of any scientific basis for measuring how radical
4 someone is whether they have acted or not. This is a *Daubert*
5 issue. We did not have notice of this.

6 MR. CHAKRAVARTY: I can move on, your Honor, but it's
7 a simple, you know, general question.

8 THE COURT: All right.

9 BY MR. CHAKRAVARTY:

05:18 10 Q. Does the length of time that someone consumes radical
11 material indicate how radicalized somebody is?

12 A. No. Again, we're all individuals. For some people, to
13 get radicalized you'd need to be exposed to material for a long
14 period of time; for other people it's very, very quick. The
15 problem that we have nowadays -- and this is something I
16 studied closely, especially over the past few months -- is that
17 the pace of radicalization is much, much faster, the time
18 period is much, much shorter over the past few years than we
19 have seen in the past.

05:19 20 Q. How about the nature and the volume of propaganda or other
21 materials that somebody amasses. Is that dispositive as to how
22 radical somebody might be?

23 A. Not necessarily, no. Again, it depends on the individual.
24 Some people would need to have a lot of material and be
25 reviewing it all the time and really, you know, immersing

1 themselves in it, some people, short-term immersion of just a
2 few particularly inspiring pieces of radicalization written,
3 audio, video will be enough.

4 Q. In the course of your study, have you found a way to
5 predict whether somebody was going to be a terrorist or not?

6 A. No, and I don't know anybody else who has.

7 Q. What are the channels through which this global jihadi
8 movement actually recruits people to engage in the activities
9 that you're talking about?

05:20 10 A. So there's a spectrum again. You know, back in the day it
11 was primarily by drawing people to terrorist training camps
12 around the world, and there are still people who will travel
13 either for training camps or for opportunity to fight in
14 foreign conflicts, but that is increasingly the exception.
15 Increasingly, it is reaching out to people, and not necessarily
16 to a particular individual, in kind of a direct communication,
17 through online social media communication: putting out there
18 these audio files, these video files, these documents
19 manifestos that people can access, you know, in their mama's
05:21 20 basement without having had to travel. And that is our
21 greatest concern right now.

22 Q. And how do they use the Internet to communicate this
23 information?

24 A. Well, they post things online. It can be radicalization
25 material; it can be, you know, if you want to contribute to the

1 cause in other ways, such as giving money, they can communicate
2 ways of giving money; they communicate if you want to -- if you
3 decide that you'd rather travel someplace, there's now
4 instructions on here's places you could go. Here's types of
5 things you should bring. Here's what you'll need to know if
6 you're going to go someplace. If you decide not to go, here's
7 what you could do.

8 So it's not just the question anymore about radicalizing
9 and mobilizing, inspiring someone with these radical ideas, now
05:21 10 it's also operationalizing them. Again, removing another level
11 of barrier to entry. This time not barrier to radicalization
12 but barrier to operationalization. And this has, therefore,
13 been described as "terrorism on the go," right?

14 So you want to know how to put together a bomb? You can
15 see that online. You want to know how to communicate securely?
16 There's stuff about that online. You want to know, on the
17 other hand, how to go and travel someplace and what to expect
18 when you get there and what types of things you should bring?
19 That's available too.

05:22 20 Q. Are there particular websites that these extremist groups
21 use?

22 A. There are a whole host of them. And some of them got
23 knocked down and they pop up elsewhere. The most common theme
24 about them is there are certain types of common radicalization
25 propaganda that they tend to put up on there; in particular

1 Inspire magazine which was published by al-Qaeda in the Arabian
2 Peninsula.

3 Q. Okay. We'll talk about that in a moment. I'm just going
4 to ask you about a few websites and ask if you're familiar with
5 these. Tibyan Publications?

6 A. Tibyan Publications, if I recall correctly, actually isn't
7 up anymore. But it was -- and its publications are still
8 available on other websites, mirror sites. But it was a
9 prominent jihadi kind of online publication house, if you will,
05:23 10 for a whole host of different types of al-Qaeda and other
11 publications.

12 Q. Kavkaz Center?

13 A. Kavkaz Center is a website that was affiliated with the
14 Chechen jihadi movement.

15 Q. Hunafa.info?

16 A. Also a website with jihadi information. And if I recall,
17 also about -- related to Chechnya.

18 Q. Ghuraba.info?

19 A. Ghuraba, the stranger. Again, another one of these
05:23 20 websites where you could access this type of material.

21 Q. And then there are -- a website, one called Memri,
22 M-E-M-R-I. Are you familiar with that?

23 A. Yes.

24 Q. And also Jihad Watch. Are you familiar with that?

25 A. Yes.

1 Q. What are those?

2 A. They're a host of websites that are maintained by people
3 who track radicalization and track extremism and terrorism.
4 There's a spectrum, thereto, from the left to the right, and
5 those are both examples of kind of anti-jihadi, anti-terrorism
6 websites that maintain a collection of this material for
7 scholars and counterterrorism people to be able to access
8 without accessing the jihadi websites themselves.

9 Q. Now, does this movement specifically message to people in
05:24 10 the United States?

11 A. It does.

12 Q. How does it do that?

13 A. Online.

14 Q. And what is that message?

15 A. The message is, again, as we've said, you can come here,
16 wherever the "here" may be in that particular case, but if you
17 don't, you should do what has to be done at home. And you can
18 do things at home. Take the fight to the enemy, the United
19 States, at home. In some cases it will be alternative
05:25 20 messages: If for some reason you think you absolutely can't,
21 then you should at least -- you know, be a fighter, you should
22 at least fund a fighter. The general theme is: This is a
23 personal obligation; you have to do at least what you can do.
24 Q. And what's the value proposition offered by their
25 narrative?

1 A. The value proposition, as we've discussed, is twofold: On
2 the one hand, it's selfless, right? Do on behalf of the
3 greater ummah, the greater nation. There are people who are
4 being oppressed by the United States and others; there are
5 people who can't -- who are defenseless, who can't defend
6 themselves. We need to defend them. You need to defend them.
7 You need to be one of these elite. This is a personal
8 obligation. And then you'll be rewarded for that.

9 There's also something that is a benefit to the
05:25 10 individual, you might describe it as the selfish or at least
11 the personal benefit, which is this absolution, this cleansing
12 of past deeds, and the ability, even if you weren't such a
13 great believer before -- which includes, by the way, being a
14 Muslim, just not a jihadi Muslim -- in these people's world
15 view, this can give you absolution.

16 So this is so much greater a service. This type of
17 violence is so much greater a religious service that it can
18 absolve even if you haven't been a good person at prayer or
19 going on the Hajj, the pilgrimage, or giving of charity, a
05:26 20 zakat, et cetera.

21 Q. You mentioned a moment ago *Inspire* magazine. What is
22 that?

23 A. *Inspire* magazine is a glossy English language magazine
24 produced by al-Qaeda in the Arabian Peninsula out of Yemen.
25 Its publication was a watershed, as I said earlier, because it

1 was written in American colloquial English. So it's so
2 accessible and understandable to Western, in particular
3 American, youth. Some of the authors were people who were born
4 or lived in the United States and could speak to their American
5 experiences to be able to make a connection with the reader.

6 It's a glossy magazine like a *Newsweek* or, you know, a
7 typical American magazine only it's not about, you know, the
8 current news around the world; it's about jihad, the need to do
9 jihad, to radicalize and mobilize people to jihad, and then
05:27 10 removing the last barrier, giving how-to instructions. So you
11 don't know how to build a bomb? Here's how you build a bomb.
12 Step-by-step instructions with pictures, very, very clear, not
13 unlike the kind of step-by-step instructions with pictures that
14 my kids use when they put together a Lego that I bought them.

15 Q. Who started this magazine?

16 A. So the key person behind it was Anwar al-Awlaki. Anwar
17 al-Awlaki was an American-born Islam imam, preacher, lived in
18 the southwest, lived at one point in Virginia, came up at one
19 point in the 9/11 investigation, and ultimately left the United
05:28 20 States and moved to Yemen.

21 By virtue of having lived here much of his life, he was
22 able to draw on those experiences, speaking American colloquial
23 English combined with his knowledge of radical Islamist
24 propaganda. And he was a gifted speaker, very calm, very
25 professorial, and was an extraordinarily effective radicalizer.

1 Q. What happened to him?

2 A. He was killed in a U.S. drone strike.

3 Q. Aside from *Inspire* magazine, what other types of media
4 information did Anwar Awlaki produce?

5 A. Aside from the video, the most famous are the audio. Some
6 are him over-speaking some of these nasheeds, these chants,
7 these devotionals, in this case not devotionals about kind of
8 mainstream religious ideas but violent ones, and also a whole
9 series of -- a lecture series.

05:29 10 He has two different types of lecture series: some that
11 are about the history of Islam, kind of Islam 101; the history
12 of the life of the prophet. It's called "The Life of the
13 Prophet Series," or another one is the "Hereafter Series." And
14 some of these earlier series are not jihadi at all; they are
15 introductions to Islam. And they were very, very popular among
16 people who were either Muslim but weren't particularly
17 practicing or among converts and potential converts. Again, a
18 gifted orator, a very kind of calm and steady tone.

19 But then he developed these explicitly violent jihadi
05:30 20 sermons. And authorities and fellow Muslim preachers both have
21 cited their concern about the continuum between these two sets
22 of lectures, that many people get hooked on the Awlaki lectures
23 that are just about the history of Islam and that don't call on
24 people to engage in violence, but they get hooked on them, this
25 guy's now effectively their kind of online teacher, and then

1 they follow him into his expressly violent, there's an
2 obligation upon you to engage in terrorism, violence lectures.
3 And there's tremendous concern, therefore, today even about
4 those earlier lecture series.

5 MR. CHAKRAVARTY: So if I may call up for the jury,
6 your Honor, 1143-71, which is in evidence. Page 1.

7 Q. Does this appear to be a translation of one of his
8 lectures?

9 A. Yes.

05:31 10 MR. CHAKRAVARTY: Go to page 2, please. I'm sorry.
11 Page 3, and page 4.

12 Q. And is this a picture of Mr. Awlaki?

13 A. It is.

14 Q. And it has a little biographic of him as well?

15 A. It does.

16 MR. CHAKRAVARTY: If you would go to page 8 quickly?

17 Q. Can you read the portion of this lecture that I just
18 highlighted?

19 A. "So let them spend their money as that's how they will be
05:32 20 defeated as Allah 'Azza wa Jall says they need to spend their
21 money first and then they will be defeated. So we should be
22 happy that they are spending their money to fight Islam as that
23 means that victory for Islam is soon; victory is on its way."

24 Q. What's the significance of that passage?

25 A. He's arguing that it's not just that the effective attacks

1 are in the actual explosions; let them spend their money on
2 trying to prevent us from carrying these out, and that too is a
3 means of being effective. They're spending their money to
4 fight Islam. In these radical interpretations of Islam,
5 there's supposed to be this penultimate battle where the West
6 tries to defeat Islam. That means that this ultimate victory
7 for Islam is coming, this process has begun, victory is on its
8 way.

9 MR. CHAKRAVARTY: Mr. Bruemmer, can I call up Exhibit
05:33 10 1280, which is also in evidence.

11 Q. Do you recognize this quote?

12 A. I do.

13 Q. And what is that?

14 A. "They will spend their money and they will regret it and
15 then they will be defeated."

16 Q. And is that a paraphrase of what we just read?

17 A. It is.

18 Q. Aside from Anwar Awlaki, are there other major figures in
19 the contemporary global jihad movement?

05:33 20 A. Many.

21 Q. Are there various al-Qaeda figures?

22 A. There are.

23 Q. Are you familiar with somebody named Abdullah Azzam?

24 A. I am.

25 Q. Who is he?

1 A. Abdullah Azzam is often referred to as the grandfather of
2 the modern-day jihad. He was a Palestinian who went to
3 Afghanistan and became one of the leaders of the jihad against
4 the Soviets in the 1980s. And one of his key partners there
5 was a guy who would later become very famous named Osama Bin
6 Laden. Azzam wrote a treatise, the most significant of which
7 was "Join the Caravan," that is to say, join the caravan of the
8 mujahidin, the jihad fighters. He later wrote that he had no
9 idea it would become as popular and influential as it did, but
05:34 10 it did, and it is often found among the radicalizing literature
11 of people radicalized to violence today and in the period since
12 then, in the 1980s. It's been often referred to as the key
13 manifesto, the go-to thing that people need to read to
14 understand the kind of history.

15 That was written, of course, in the context of come fight
16 the jihad against the Soviets here in Afghanistan, but what he
17 argues there is that there are many reasons why jihad is
18 obligatory and you need to do it, and it's something that's
19 incumbent upon you to do it. And those are critical concepts
05:35 20 for moving someone beyond traditional Islam to this radical
21 Islamist ideology that says that there is an obligation to
22 engage in jihad against the enemy.

23 Q. Now, people like Awlaki and some of the al-Qaeda figures,
24 did they refer back to these Azzam works?

25 A. Certainly.

1 Q. And did Azzam himself refer back to others who preceded
2 him?

3 A. Yes.

4 Q. Are you familiar with someone named Sayyid Qutb?

5 A. I am.

6 Q. Who is he?

7 A. Sayyid Qutb is a major figure in the Muslim brotherhood,
8 and his major contribution to the concept of jihad that we're
9 talking about was the idea that it's not sufficient to try and
05:36 10 work to bring Muslims back to the proper -- the proper carrying
11 out of their faith, the proper observance of their faith, and
12 only then to engage in jihad against the enemy; he felt that
13 the jihad against the enemy had to be uploaded, front-loaded,
14 and that by virtue of people participating in that jihad, they
15 would also become better Muslims.

16 Now, as we discussed earlier, there's many disagreements
17 within the kind of global jihadi movement ideological
18 waterfront. And many people in al-Qaeda would then say Qutb
19 didn't go far enough. There are many people who were Muslim
05:37 20 brotherhood who didn't subscribe all the way to al-Qaeda. But
21 those ideas of his were picked, maybe even cherry-picked, and
22 became key pillars of the writings of still more radical people
23 like Abdullah Azzam.

24 Q. Now moving from individuals to places, you talk a little
25 bit about what the geopolitical situation was in the Caucasus,

1 particularly in Chechnya, as it relates to this global jihad
2 movement in the last 20, 30 years?

3 A. When the Soviet Union fell, the Republic of Chechnya
4 rebelled. And there were two distinct wars in the 1990s.
5 Within these, there also grew a jihadi element. And Chechnya
6 became a prominent rallying cry for the jihadists. Not all of
7 this war was jihadi; there were Chechens who were rebelling
8 against the new Russia and they weren't jihadis.

9 But the jihadists used this as a platform. And many key
05:38 10 jihadists tried to go to Chechnya. Many did. Some current
11 al-Qaeda leaders tried to go and made it close but didn't get
12 all the way there, but the fact that they were trying to get
13 there shows how prominent it was at the time in the jihadi
14 landscape. And it has continued to be ever since one of many
15 foreign conflicts that jihadis have taken for themselves,
16 whether it was originally theirs or not, to use to radicalize
17 people. Look what the infidels, in this case the Russians, are
18 doing to Muslims, in this case in Chechnya.

19 Q. Are you familiar with Commander Ibn al-Khattab?

05:39 20 A. I am.

21 Q. And who is he?

22 A. Commander Khattab was a Jordanian -- some say Saudis, but
23 most likely Jordanian -- who became a very senior jihadi
24 commander in Chechnya. After he was killed, battalions were
25 named for him. There are Chechen battalions fighting in the

1 Syrian conflict now. I believe one is named for him. He
2 became a very prominent personality in the Chechen context, in
3 the Chechen jihadi context.

4 Q. Moving on to Syria, what's the role of the Syrian conflict
5 in this global jihadi movement?

6 A. Can't be overstated. We just marked four years since the
7 beginning of what, when it started, was a rebellion against the
8 rule of Bashar al-Assad. But as has been the case in Chechnya
9 and other place, jihadis use this opportunity to take a
05:40 10 rebellion and make it a jihad of their own, and it has become a
11 rallying cry around the world.

12 We talked earlier about the different types of
13 radicalization.

14 MR. BRUCK: I'm going to object to the whole
15 discussion of Syria that goes beyond the date of any of the
16 events alleged in the indictment.

17 THE COURT: Overruled.

18 THE WITNESS: Sticking even to the first two years of
19 the Syrian conflict two years ago, there's a whole host of
05:40 20 different things that drew jihadis to this conflict. Some were
21 drawn by jihadi ideology and wanted to go fight with the next
22 incarnation of al-Qaeda, and some were drawn to defend Muslims,
23 Sunni Muslims who were being butchered by the Assad regime.
24 Some of those people didn't go farther and stayed with what you
25 might call moderate, or non-Islamist, non-jihadi battalions.

1 Many did move to still more radical battalions.

2 Within the radical literature circulating in the home
3 of any person who has a computer, online Syria has become the
4 most powerful magnet drawing people to fight jihad. And not
5 just to fight in Syria, or now more recently in Iraq as well,
6 but again, as al-Qaeda in the Arabian Peninsula said even
7 earlier through its *Inspire* magazine, today groups like this
8 Islamic state which has a magazine called *Dabiq*, glossy,
9 English, very much like *Inspire* magazine, echoes *Inspire's*
05:41 10 message saying: Come here if you want, but you don't have to.
11 And if you don't come here, take it to the infidels at home and
12 hit them at home.

13 BY MR. CHAKRAVARTY:

14 Q. Pakistan and Afghanistan: How do they relate to the
15 contemporary global jihad movement as of 2013?

16 A. After the war in Afghanistan -- well, first, the war in
17 Afghanistan after 9/11, and after years of fighting in
18 Afghanistan what was left of the al-Qaeda core and some
19 al-Qaeda affiliates was in that border area of
05:42 20 Afghanistan/Pakistan, and in some cases individuals or cells
21 elsewhere in large cities in Pakistan. And this was something
22 of the everyday news, of coalition forces continuing to fight
23 the remnants of al-Qaeda and the Taliban in Afghanistan and in
24 Pakistan, increasingly through the use of drones which has
25 become a very controversial tactic, which in and of itself

1 according to many scholars has attributed to radicalization.

2 Some drone strikes, I think it's hard to argue, have not
3 been effective; have been able to reach places you'd never be
4 able to reach on foot and removed some very dangerous people,
5 and some the exact opposite end of the spectrum, were complete
6 misses and killed innocents, which as you can imagine,
7 radicalizes people.

8 Q. Let's turn now to *Inspire* magazine in greater detail,
9 Dr. Levitt, if you will. Can you tell us the significance of
05:43 10 the first issue of *Inspire* magazine?

11 MR. CHAKRAVARTY: And I'll call up what's in evidence
12 as 1142-091.

13 A. So the release of the first issue of *Inspire* magazine, as
14 I said, was a watershed event. You'd be able to access this
15 through your computer. It's not for sale; it's for free. It's
16 popping up in mirror sites. It is in accessible American
17 colloquial English. It's glossy. It's got a table of
18 contents. It bulletizes in the front some of the key things to
19 look forward to in the edition, what page you can flip right
05:44 20 to. And it's extraordinarily accessible, and really for the
21 first time in this type of American English, doesn't stop at
22 you really should do stuff. It's incumbent upon you to do
23 stuff. It takes it to the next step: Here are ideas for what
24 you might want to do, and here's how you might go about doing
25 them, removing barriers and disincentives to entry.

1 So it's inspiration on the go, it's know-how on the go.
2 And what they're hoping for and unfortunately ultimately
3 succeeding, enabling terrorism on the go.

4 MR. CHAKRAVARTY: If we could go to page 2, please.

5 Q. Is this a letter to the editor?

6 A. Yes.

7 Q. And does this spell out what the purpose is of *Inspire*
8 magazine?

9 A. Yes, it explains the derivation of the name, why they use
05:45 10 the name "Inspire" and what they're trying to do.

11 MR. CHAKRAVARTY: Go to page 17, please.

12 Q. I'd ask you to read this and explain its significance. It
13 actually goes on to the next column.

14 A. So this is a series of questions. We're starting here
15 with Question 9. If memory serves, this is from an interview
16 with one of the leaders of al-Qaeda in the Arabian Peninsula,
17 and the editors of the magazine are asking this individual the
18 ninth question, Question 9: "In the end, what is your advice
19 to the Muslims in the West?" And the answer is: "My advice to
05:46 20 my Muslim brothers in the West is to acquire weapons and learn
21 methods of war. They are living in a place where they can
22 cause great harm to the enemy and where they can support the
23 messenger of Allah."

24 Q. And does it continue up here?

25 A. It does. "There is no meaning in life if the messenger of

1 Allah is cursed while they listen to and see such crimes being
2 committed in front of their eyes. It is not enough to defend
3 him, may my father and mother be sacrificed for him, to
4 participate in demonstrations and protests because these
5 methods would not stop the West, which is already used to them.
6 The successful means are through explosive devices and
7 sacrificing souls."

8 Q. And what is the speaker communicating here?

9 A. It's not enough to protest, it's not enough to write
05:47 10 letters to the editor. The West is used to this type of thing.
11 The way to truly defend the name of God and the name of the
12 Prophet Muhammad is through violence.

13 MR. CHAKRAVARTY: Page 31 and 32, if you could call
14 these up side by side.

15 Q. What is "Open Source Jihad"?

16 A. So "Open Source Jihad" is a section of the magazine that
17 appears in multiple editions. This is obviously the first
18 time; this is the first edition. It's a play on the idea of
19 open source intelligence, which is something that has been
05:47 20 widely reported in the media, about trying to leverage not just
21 classified information but information that is what -- when I
22 was in the intelligence community -- we would call the open
23 source, online or elsewhere. A play on that is "Open Source
24 Jihad."

25 So the idea is instead of having to go to some classified

1 place, some closed members-only chat room, instead of having to
2 go to some training camp where someone has to vouch for you and
3 you need to get there and pay for your travel and whatnot, here
4 is "Open Source Jihad" available to you, easily accessible on
5 the Internet. And in this first inaugural edition, it says in
6 this section: "Make a bomb in the Kitchen of Your Mom"; and
7 the second point, "How to use Asrar al-Mujahideen," which was
8 an al-Qaeda secure communication -- online communication
9 network.

05:48 10 MR. CHAKRAVARTY: If you would go to a single screen,
11 next page, 33.

12 Q. Are you familiar with this page?

13 A. I am.

14 Q. And is this the first page of that article on "Make a Bomb
15 in the Kitchen of Your Mom"?

16 A. It is. By what they describe as the al-Qaeda chef.

17 Q. So let me first start with the first paragraph. Would you
18 just read the white portion of that?

19 A. "Can I make an effective bomb that causes damage to the
05:49 20 enemy from ingredients available in any kitchen in the world?

21 The answer is yes. But before how, we ask why? It is because
22 Allah says." And then there's a quote.

23 Q. And is that a quote from a religious scripture?

24 A. It is.

25 Q. Can you read the next section?

1 A. "And it is also because every Muslim is required to defend
2 his religion and nation. The Jews and Christians have
3 dishonored the Muslims, desecrated our holy places and cursed
4 the beloved prophet. Today they are holding contests for the
5 best blasphemy of Muhammad.

6 "The western governments today are waging a relentless war
7 against Islam. They brought together a coalition and have the
8 support of their population in invading and destroying Muslim
9 land.

05:50 10 "But there is a small band of sincere Muslims who are
11 striking back at the enemy. The efforts of this small group of
12 mujahidin have had a great effect in hindering the plans of the
13 enemy. So now we have a balance of forces. As they kill
14 Muslims, Muslims respond by killing among them. This is the
15 effect of a small group of sincere mujahidin, so what would the
16 effect be if the Muslim ummah wakes up?"

17 Q. Pause there for a moment. What is mujahidin?

18 A. Jihad fighters.

19 Q. And the "ummah" is the same word you mentioned earlier for
05:51 20 Muslim nation?

21 A. So if a small number of fighters have had this much
22 success, imagine how much more success there would be if a much
23 larger grouping -- if the whole nation were to rise and engage
24 in this activity.

25 Q. Please continue.

1 A. "There are many Muslims who have the zeal to defend the
2 ummah, but their vision is unclear. They believe that in order
3 to defend the ummah, they need to travel and join the mujahidin
4 elsewhere and they must train in their camps. **But we tell the**
5 **Muslims in America and Europe** there is a better choice, an
6 easier one to give support to your ummah. That is individual
7 work inside the West such as the operations of Nidal Hassan and
8 Faisal Shahzad with a few 'failed' operations - as they claim.

9 "The Director of National Intelligence was forced to
05:52 10 resign. With a few more 'failed operations' we may have the
11 resignation of the President of the United States."

12 Q. Dr. Levitt, it sounds like there's a political dimension
13 to this exhortation. Is there?

14 A. Yes. In part, that's what makes it terrorism and not just
15 murder. Terrorism has to be by -- there are many definitions
16 of terrorism, but the basic commonality is targeting civilians
17 to achieve some type of political goal.

18 Q. At the bottom of this -- start here after this passage.
19 First it recites to another part of scripture, and then can you
05:53 20 read from where it says "the results"?

21 A. "The results of these trials would be the highest levels
22 of paradise, the pleasure of Allah, heaven in the hearts in
23 this world and eternal pleasure in the afterlife. My Muslim
24 brother, **we are conveying to you our military training right**
25 **into your kitchen to relieve you of the difficulty of traveling**

1 **to us.** If you are sincere in your intentions to serve the
2 religion of Allah, then all what you have to do is enter your
3 kitchen and make an explosive device that would damage the
4 enemy if you put your trust in Allah and then use this
5 explosive device properly. Here are the main qualities of this
6 bomb."

7 The following are four bullet points. The first bullet:
8 "Its ingredients are readily available"; second bullet:
9 "Buying these ingredients does not raise suspicion"; third
05:54 10 bullet: "It is easily disposed of if the enemy searches your
11 home. Sniffing dogs are not trained to recognize them as
12 bomb-making ingredients"; fourth bullet: "In one or two days
13 the bomb could be ready to kill at least ten people. In a
14 month, you may make a bigger and more lethal bomb that could
15 kill tens of people."

16 Q. Does the magazine then go on to explain how to build these
17 bombs?

18 A. It does.

19 MR. CHAKRAVARTY: Can we go to page 45 and 46 side by
05:54 20 side, please?

21 Q. What is this?

22 A. Pardon?

23 Q. What is this?

24 A. This is another section of this first edition of *Inspire*
25 called "What to Expect in Jihad - Part One."

1 Q. And does this explain the process of traveling overseas to
2 join a terrorist organization or a group that's fighting?

3 A. It describes the things that one needs to know in advance
4 to overcome potential barriers to entry. In fact, one of the
5 titles given in one of these is "cut out piece of paper" -- you
6 can see even here the kind of fine-tuned graphics, there's
7 language barrier. It's telling people you have to be prepared
8 to overcome the language barrier. If you can, bring a
9 companion. There will be downtime; it would be much better to
05:55 10 have someone with you. There's a cultural issue of blending
11 into the culture if you go fight in some foreign land. Don't
12 expect it to be America or the United Kingdom or wherever
13 you're from. What to bring, what not to bring, all sorts of
14 advice what to do and what not to do to make it easier for you
15 to make the decision to go and to then make it easier for you
16 to actually do it once you decide to go.

17 MR. CHAKRAVARTY: Can we have page 56, please? Can we
18 have 58 on the other screen? Thank you.

19 Q. What is this portion?

05:56 20 A. This is a message from Anwar Al-Awlaki, Sheikh Anwar, to
21 the American people and Muslims in the West.

22 Q. And is it an extensive speech explaining what he thinks is
23 the appropriate actions by Muslims in America?

24 A. In America in particular, but also more generally in the
25 West. In some points in here he speaks specifically to the

1 Muslims in the United States, and other times more generally to
2 Muslims wherever they may be in the West.

3 Q. Page 58, I'm highlighting just the last portion. Can you
4 read that?

5 A. "Hence, my advice to you is this: You have two choices:
6 Either hijra," which is immigration, "or jihad. You either
7 leave or you fight. You leave and live among Muslims or you
8 stay behind and fight with your hand, your wealth and your
9 word. I specifically invite the youth to either fight in the
05:57 10 West or join their brothers in the fronts of jihad:

11 Afghanistan, Iraq and Somalia. I invite them to join the new
12 front, Yemen, the base from which the great jihad of the
13 Arabian Peninsula will begin, the base from which the greatest
14 army of Islam will march forth."

15 Q. Is this concept of choosing either hijra or jihad one that
16 you've seen before?

17 A. Many times.

18 Q. Can you explain what hijra is?

19 A. It's migration, and it's following in the footsteps of the
05:57 20 Prophet Muhammad who in his day also made a migration. This
21 idea is to make a migration to places where there's a Muslim
22 majority; where you can live with fellow Muslims as opposed to
23 living in a place where you are a minority as a Muslim.

24 At least if you live among Muslims, it will be easier for
25 you to live as a Muslim, is the idea, plus on top of that, the

1 overlay from the radical jihadi perspective of being able to
2 fight in jihadi conflicts. And if you don't do that and if you
3 do decide to stay wherever you are in the diaspora, then as he
4 says, you either join us or you fight.

5 Q. Were there other copies of *Inspire* magazine that we sent
6 to you that were similar in terms of the types of exhortations
7 that the editors of the magazine were making?

8 A. Quite a few.

9 Q. I'm going to draw your attention now to Exhibit 1142-89.

05:58 10 Is this one of those issues? Excuse me. Yeah, 1142-89.

11 A. It is.

12 Q. And this is the spring of 2011 issue. Is that right?

13 A. Yes, the fifth issue.

14 Q. And was this a significant issue?

15 A. They're all significant. Yes, it was.

16 MR. CHAKRAVARTY: Can we go to page 8, please?

17 Q. Is there a portion that discusses the various reactions to
18 *Inspire* magazine?

19 A. Yes.

05:59 20 Q. And this one, can you read that?

21 A. "They're not looking to outdo the readership of the
22 *Economist* or *Time Magazine*, they only need to inspire one or
23 two people to blow something up in the right place and they'll
24 make back their start-up costs."

25 Q. Now, the highlighted passages were "inspire one or two

1 people" and "in the right place." Is that correct?

2 A. Correct.

3 MR. CHAKRAVARTY: Can we go to page 62 and 63 side by
4 side, please?

5 Q. And is this an interview of Anwar Awlaki as to "Why did I
6 choose al-Qaeda"?

7 A. Exactly.

8 Q. And does he say in Section 4 -- would you read that
9 passage except for the scripture?

06:01 10 A. "Because they are the strangers (al Ghuraba)" and then he
11 quotes scripture. After the scripture he continues,
12 "Thereupon, regarding this prophetic description for the people
13 of the truth about their status of estrangement, there is no
14 doubt that the one who lives in a state of fear about his soul
15 being taken for death as a result of this 'aqidah and jihad is
16 the one who lives in the status of being strange. He lives in
17 the state of estrangement because he is accused of having
18 deficiency in his 'aqidah," in his creed, in other words.
19 "This is not the case; rather, it is because he is steadfast
06:01 20 upon the truth in a time where the supporters have become less
21 in number. Indeed he is a stranger."

22 Q. And what does that mean?

23 A. Being a stranger is not just living in the diaspora, being
24 a stranger is living in a state of fear about whether or not
25 you're going to live or die, because there is something greater

1 in the afterlife.

2 Q. Are you familiar with a person named Abu Muhammad
3 al-Maqdisi?

4 A. I am.

5 Q. And who is he?

6 A. Al-Maqdisi is one of the most prominent Jordanian radical
7 Islamist preachers, been in and out of jail many, many times.
8 His materials are frequently included among the jihadi
9 materials on these various websites, and is a very well-known
06:02 10 and prominent jihadi ideologue.

11 Q. And did you read documents authored by him as part of the
12 materials that we sent?

13 A. I did.

14 MR. CHAKRAVARTY: Can we call up 1142-16, page 2?

15 Q. Is this one of those documents?

16 A. It is.

17 Q. And is this published by a Tibyan Publications, the
18 publication you mentioned earlier?

19 A. It is.

06:03 20 Q. Can you read the title?

21 A. "Precaution, Secrecy and Concealment: Balancing Between
22 Negligence and Paranoia."

23 Q. And what is the topic of this document?

24 A. Well, as the title suggests, it's about the need for
25 operational security and how this is not only permissible but

1 required for the Islamist fighter, the jihadi, and how on the
2 one hand you can go overboard; on the flip side, you can be
3 negligent, and either of those is dangerous. So he describes
4 in talking about something innocent with one of your
5 compatriots, you insist on talking in code thereto, you could
6 make the authorities think you're up to something dangerous and
7 bring law enforcement scrutiny to yourself that was
8 unnecessary. So you shouldn't be engaging in, you know, covert
9 code all the time. And yet, if you think that no one's ever
06:04 10 listening to you and you don't take security precautions, you
11 also open yourself up to potential law enforcement scrutiny.
12 And many of our operatives, he explains, have been thwarted
13 that way as well.

14 He, as an ideologue -- this is not just kind of as an
15 operator's incentive, he explains the ideological, theological
16 basis for this. This becomes now a matter of religion as well.

17 Q. Now, has this message of operational security been
18 simplified for easier consumption?

19 A. Absolutely.

06:04 20 MR. CHAKRAVARTY: If we could go to 1142-89, page 11.

21 Q. Would you read that? Should I open that up a little bit
22 more? Can you read that?

23 A. "We have noticed that the year 2010 alone saw the most
24 arrests in the West for home-grown jihadi operations. Most of
25 those arrested were arrested in groups, one connected to

1 another. Sometimes the enemy would even set up the brother in
2 a sting operation, fooling him into believing that he was
3 working with the mujahidin. Keeping that in mind, we have
4 witnessed that operations done by lone individuals has proven
5 to be much more successful.

6 "So what can we learn from this?" I think the last two
7 cutoff words are "group operations have a greater tendency of
8 failing than lone operations due to the idea (of the operation)
9 escaping the mind and tongue to other individuals. Even if
06:06 10 those individuals are trustworthy in your eyes, there is still
11 that 1 percent chance that someone from the intelligence
12 agencies are listening in and paying attention to your groups'
13 actions or that the person you are talking to might be working
14 for the enemy or that he might be pressured..."

15 MR. CHAKRAVARTY: Next page, please.

16 Q. Just to finish that thought.

17 A. "...at a later period to give information to them. With
18 lone operations, however, as long as you keep it to yourself,
19 nobody in the world would know what you're thinking and
06:06 20 planning."

21 MR. CHAKRAVARTY: Call up Exhibit 1142-15.

22 Q. Are you familiar with this document?

23 A. I am.

24 Q. And is this another Tibyan Publications document?

25 A. It is.

1 Q. And what was the substance of this document?

2 A. This, again, is another document putting the idea of jihad
3 in a religious context.

4 Q. "The effects of intention upon it." Did it say anything
5 about the type of intentions that bring the greatest rewards?

6 A. Well, this is the whole point, right, that to get rewards,
7 whether it's that selfless, what you're doing on behalf of the
8 ummah, or the benefits for one's self of entry into the highest
9 levels of paradise, these only come if they're done for true
06:07 10 intentions, right? So if you do it for monetary gain, you
11 don't get that reward. If you do it for personal glory, you
12 don't get that reward.

13 You have to do what you do for the right reasons, which
14 makes it in the eyes of these extremists not an act of
15 terrorism, not an act of killing civilians that is forbidden,
16 but an act -- a religious act of violence that is not only
17 permissible but praiseworthy, and not just praiseworthy, but a
18 personal obligation, but only if you do it for the right
19 reasons and the right intention.

06:08 20 Q. And what are the right reasons?

21 A. Service of God, defense of the ummah.

22 MR. CHAKRAVARTY: Would you go to 1142-36.

23 Q. Are you familiar with this document?

24 A. This is the Abdullah Azzam document, "Join the Caravan,"
25 that we mentioned earlier.

1 Q. Since we talked about it earlier, I won't go through it in
2 detail at this moment.

3 In addition to some of these documents, did you review
4 some of these audio files that you had discussed?

5 A. Too many.

6 Q. Were there a few short ones that you were able to both
7 listen to as well as see a transcript of?

8 A. Yes.

9 MR. CHAKRAVARTY: Just for the witness, your Honor,
06:09 10 Exhibit 1405A. Just the transcript.

11 Q. And is this three pages of transcript excerpts of three of
12 the audio files that we're going to listen to?

13 A. I have here in front of me one paragraph of one of them,
14 yes; and a second, yes; and a third.

15 Q. And do these transcripts fairly track the words of the
16 audio files that you listened to?

17 A. They do.

18 MR. CHAKRAVARTY: Your Honor, I would ask to publish
19 1405A as a chalk while we play three short audio clips.

06:09 20 MR. BRUCK: I'd like to note our previously made
21 objection.

22 THE COURT: All right. Subject to that, they'll be
23 played.

24 BY MR. CHAKRAVARTY:

25 Q. So if we could first play 1142-24 -- 124. Excuse me.

1 (Audio recording played.)

2 Q. Dr. Levitt, do you recognize the voice of the speaker in
3 that?

4 A. That was Sheikh Awlaki, Anwar al-Awlaki.

5 Q. And what's the significance of that passage that he
6 recited?

7 A. So this Battle of Uhud is one that he talks about a lot,
8 he has a lecture series on it, among other battles, the Battle
9 of Badr, for example. In this one, it's a theme we talked
06:13 10 about earlier, he's saying: Look, if you do this act of jihad
11 with true intention -- the individual is asked, "Did you come
12 to fight here for the sake of your people or for the sake of
13 God?" And he answers, "For the sake of God." And then later
14 on his deathbed he says the Shahadah, the statement of faith,
15 and dies and is given entry into the highest levels of paradise
16 even though he had not been a good Muslim until then. He had
17 not prayed, he had not fasted, et cetera.

18 And so there is this idea that engaging in an act of
19 jihadi violence for the right reasons and intentions is a
06:13 20 religious act, and not just a religious act. One that can be
21 more spiritually fulfilling than any other type of religious
22 observance.

23 MR. CHAKRAVARTY: Go to 1142-110 and page 2.

24 (Audio recording played.)

25 Q. Dr. Levitt, first, there's some references, again, is this

1 Mr. Awlaki?

2 A. This is Awlaki again, yes.

3 Q. And what's the significance of this?

4 A. Well, I think there are three things that are significant
5 here: The first is you can see how he's trying to convince
6 people that to be a good Muslim, you have to break with Western
7 ideas. I mean, the idea of a birthday. This is a bad thing,
8 whereas, of course, many, many, many Muslims celebrate
9 birthdays and there's absolutely nothing wrong with that. This
06:17 10 idea of breaking, having to be different and apart.

11 But more importantly it's two things: One, there's a
12 clock ticking. Don't waste a moment. Act now. It's: Don't
13 push off to tomorrow what you can do today, right? Death could
14 come tomorrow. You don't know what's going to be. We should
15 be not wasting a moment of our life, to try and do what has to
16 get done, whatever that may be, including this violent activity
17 that he talks about elsewhere.

18 Second is this idea of predestined time of death. And
19 that is to say, you know, this is not something to fear. This
06:18 20 is not something to be afraid of, as we read in an earlier
21 quote; this is something that's going to happen. The date, the
22 time, the how, this is all predetermined. It's not like if you
23 are more careful or less careful -- it is going to happen, so
24 you therefore have to take this time while you're here to do
25 the right thing. And you don't have to be afraid of death

1 because it's going to happen, it's preordained when, how, what.

2 And this again removes the disincentive. For many people
3 the idea of carrying out an operation in which they're not
4 going to survive is something that's difficult for them to wrap
5 their head around. This is one way that the radical
6 individuals -- again, let's not associate this with traditional
7 Islam -- try and overcome that dissidence.

8 Q. There are a couple of words that I don't think we talked
9 about yet here. Is "dunya" basically this mortal life that
06:19 10 we're talking about?

11 A. Yes, this world.

12 Q. And kuffar, or "kufar"?

13 A. The infidel, or non-believer.

14 Q. Now, in the background there's some chanting or singing.
15 Is that the nasheed that you described earlier?

16 A. It is. So here you have a kind of overlay of an al-Awlaki
17 sermon on top of the chanting of a nasheed.

18 Q. And in the earlier clip, which was entitled "The Man who
19 went to Jannah Without Praying," what is Jannah?

06:19 20 A. Paradise.

21 Q. I'll play one more short clip. I'm not going to go
22 through the whole thing but a portion of it, which is 1142-32
23 and page 3.

24 (Audio recording played.)

25 Q. Dr. Levitt, this was a considerably different tenor. Was

1 this Anwar Awlaki?

2 A. No, this is not Awlaki. This -- you can completely hear
3 the difference between the measured kind of professorial tone
4 of Awlaki and this shrill, very, very excited speaker here.
5 And this is obviously much more graphic in terms of trying to
6 portray Islam in this violent context.

7 Q. And audio files like these which are short clips of the
8 various different types, how are they used by the global jihadi
9 movement with regards to their messaging?

06:22 10 A. Short or longer, they're very, very popular because
11 they're relatively small files. They're meant to be downloaded
12 to players, and they are inspiration on the go. So you don't
13 need to be tethered to your home computer, you don't even need
14 to be carrying your laptop around. You can, you know, download
15 them to your MP3 player or to your car and you can listen to
16 them any time, as many times as you want.

17 Q. Dr. Levitt, I want to now turn to the final series of
18 questions that I'm going to have for you, and they relate to
19 Exhibits 826 through 828.

06:23 20 MR. CHAKRAVARTY: If you'd call that up on the left
21 side?

22 Q. Dr. Levitt, did you recognize those photos as being photos
23 of a writing that's of significance in this case?

24 A. Yes.

25 Q. And this transcript, is this a transcript of the writing?

1 A. It is.

2 Q. And have you had a chance to study that writing?

3 A. I have.

4 Q. Were you able to glean from just the four corners of the
5 writing itself who the audience is for this writing?

6 A. I think it's clear from the grammar that the audience is
7 kind of the American public. This is clearly not written for
8 fellow travelers, fellow jihadis; this is an attempt to explain
9 what's been done, and I think the grammar is quite clear there.

06:24 10 Q. As we read through, if you can point those out -- point
11 out those clues that give you that conclusion. We'll do that.
12 But before we start reading, have you seen the concepts in this
13 document before?

14 A. Yes.

15 Q. Where?

16 A. We've seen them in Awlaki's statements and writings and
17 other writings from the radicalizers that was among the
18 material that was provided to me to review in this case.

19 Q. The themes that weave throughout this writing, are they
06:25 20 common themes in the global jihad movement?

21 A. They are.

22 Q. Let's first start with the first sentence. Would you read
23 that, please?

24 A. "I'm jealous of my brother who ha..." and there's a bullet
25 hole. Presumably it's "...has received the reward of Jannutul

1 Firdaus, Insha'Allah..." which means the highest level of
2 paradise, God willing "...before me."

3 Q. To stop you there. Just some of the grammar.

4 "Insha'Allah" means "God willing"?

5 A. Yes.

6 Q. And "Jannutul Firdaus," that's the highest level of
7 paradise?

8 A. Yes.

9 Q. And is this a concept we've seen in some of the other
06:25 10 documents that you've reviewed?

11 A. It is.

12 MR. CHAKRAVARTY: Can we call up on the second page
13 1142-36, which is "Join the Caravan"? Can we go to page 17,
14 please?

15 Q. And can you read Section 8?

16 A. Section 8 the title is "Hoping for Martyrdom and the High
17 Station in Paradise."

18 "It has been reported in the authentic hadith narrated by
19 Imam Ahmad and Tirmidhi on the authority of Miqdam Ibn Ma that:
20 'The martyr has seven special favours from Allah: He is
21 forgiven with the first spurt of his blood, he sees his place
22 in Paradise, he is clothed with the garment of Faith, he is wed
23 with seventy-two wives from the beautiful Houris of Paradise,
24 he is saved from the punishment of the grave, and he is
25 protected from the Great Terror on Qiyamah, on his head is

1 placed a crown of dignity, the jewel of which is better than
2 the world and all in it.'"

3 Q. Please continue.

4 A. Starting with the first full sentence: "He is granted
5 intercession for 70 people of his household."

6 Q. And then there is another reporting by a scholar and then
7 another piece of scripture?

8 A. Yes.

9 Q. And is this a common theme in some of the global jihadi
06:27 10 movement?

11 A. Yes.

12 Q. And were there numerous other references to Jannutul
13 Firdaus throughout the materials that you reviewed in this
14 case?

15 A. Yes.

16 Q. Read the next sentence of the writing in the boat.

17 A. "I do not mourn because his soul is very much alive. God
18 has a plan for each person. Mine was to hide in his boat and
19 shed some light on our actions. I ask Allah to make me a
06:28 20 shahied (IA)..." presumably Insha'Allah, God willing "...to
21 allow me to return to him and be among all the righteous people
22 in the highest levels of heaven."

23 Q. And, Dr. Levitt, you had pointed out that there's a line
24 where it says "God has a plan for each person. Mine was to
25 hide in the boat and shed some light on our actions." Have the

1 actions that are relevant in this case been suggested
2 throughout the media that you reviewed?

3 A. They have, and this is also one of those references that I
4 think makes clear that this note is intended to explain to a
5 broad public what was just going on, about what these actions
6 were about, "shed some light on our actions."

7 Q. This word "shahid," I don't know that you've explained
8 what that means. Would you mind?

9 A. Martyr. In this case, a martyr for God. To be killed in
06:29 10 the process of doing an act of jihad. It's not the only
11 definition of martyr, but in the radical jihadi context, that's
12 what it's referring to.

13 Q. And I asked you whether you saw these references in the
14 media that I sent you. What did I send you?

15 A. I'm sorry. Ask that again?

16 Q. Media. I didn't mean media as in news media. What did I
17 send to you that you reviewed, these materials?

18 A. In totality?

19 Q. The types of materials that I sent you.

06:30 20 A. The nasheeds, the -- some videos, the *Inspire* magazines.
21 The publications that we went through and a whole host of
22 others.

23 Q. I wanted to clarify it wasn't newspapers I sent to you.

24 A. No, this was jihadi media.

25 Q. Can you read the bottom of -- if you can make out on page

1 56 of this issue of *Inspire* magazine, can you read what I've
2 highlighted there?

3 A. "Another option for the individual jihad is the idea we
4 proposed in 'Make a Bomb in the Kitchen of Your Mom.' The
5 pressurized cooker should be placed in crowded areas and left
6 to blow up. More than one of these could be planted to explode
7 at the same time. However, keep in mind that the range of the
8 shrapnel in this operation is short range, so the pressurized
9 cooker or pipe should be packed close to the intended targets
06:31 10 and should not be concealed from them by barriers such as
11 walls."

12 Q. Were there other references to operational planning for
13 the types of actions in this case?

14 A. Yes.

15 Q. The next portion of this note, the writing, says -- asks
16 Allah to make the author a shahid and to return him to the
17 righteous people in the highest levels of heaven. What do the
18 "highest levels of heaven" mean?

19 A. This is the Jannutul Firdaus that we talked about. By
06:32 20 tradition, there are many levels of heaven and the differences
21 between them are significant. And this is the highest level of
22 heaven reserved for the prophets, the most pious and the
23 martyrs.

24 Q. Would you read the next line, please?

25 A. "He who Allah guides, no one can misguide."

1 Q. What does that mean?

2 A. That if you were doing something in the name of and in
3 defense of and for Allah, for God, you cannot be misguided.

4 Q. And the last phrase?

5 A. The letter A, then a bullet hole, bar exclamation point
6 which in all likelihood read "Allahu Akbar," praise to God,
7 praised is God -- God is great.

8 Q. And is that a common phrase in the materials that you
9 reviewed over the course of your experience as a terrorism
06:33 10 expert?

11 A. Yes.

12 Q. And what does that mean?

13 A. God is great. Again, it need not be jihadi; it can be
14 said in other contexts too. But in this context, this has a
15 jihadi connotation.

16 MR. CHAKRAVARTY: The next page, please.

17 Q. Please continue.

18 A. "I bear witness that there is no God but Allah and that
19 Muhammad is his messenger." There's a hole and then an R which
06:33 20 likely read "our actions came with a..." there's a bullet hole
21 and then the letter A, bullet hole, "ssage," "...came with a
22 message, and that is..." hole -- bullet hole, "...ha,"
23 Illallah.

24 Q. The last phrase, is that an Arabic phrase?

25 A. Yes.

1 Q. And is that frequently known as the "Shahadah"?

2 A. Yes.

3 Q. What is that?

4 A. It is a statement of faith. And again, nothing radical
5 about this, per se. This is the statement of faith of all
6 believing Muslims. But it is also traditional to state it at a
7 time of death on the deathbed. Again, harking back to the
8 Maqdisi document about intention, it's important before and
9 after an act in particular to state and restate one's true
06:34 10 intentions to be able to get that reward.

11 Q. The first portion of this sentence, "I bear witness that
12 there's no God but Allah and that Muhammad is his messenger,"
13 is that essentially the English translation of the first
14 portion of the Shahadah?

15 A. Yes.

16 Q. Let me show you Exhibit 1341. And this flag back here.
17 Do you recognize that?

18 A. I recognize it. As I stated earlier, I don't speak
19 Arabic, but I've seen this many times, and this is the Arabic
06:35 20 of the Shahadah; again, nothing inherently radical though many
21 jihadi groups have taken to putting the Shahadah in white
22 against the black backdrop as a symbol for them.

23 MR. BRUCK: I think that image is not currently in
24 evidence.

25 THE COURT: I thought it was. This was the one that

1 was talked about being redacted, at the bottom.

2 MS. CONRAD: It was redacted, your Honor.

3 MR. MELLIN: No, your Honor. The writing below it was
4 redacted; that image was entered.

5 THE COURT: Right. The picture was in.

6 MS. CONRAD: The whole thing was displayed, your
7 Honor, for the jury.

8 THE COURT: Yeah, but I don't think anyone could read
9 it. The document should be redacted, though. It didn't affect
06:35 10 anything that was shown to the witness.

11 BY MR. CHAKRAVARTY:

12 Q. We'll move on to the next sentence, Dr. Levitt.

13 A. "The U.S. government is killing our innocent civilians but
14 most of you already know that."

15 Q. And here it says "most of you already know that." What
16 significance do you attribute to that?

17 A. Again, the grammar, this is speaking to an American
18 audience, this is speaking to a Western audience. The author
19 is not associating himself with this audience, but it's "our,"
06:36 20 "your," us versus them, but I think this makes clear that this
21 is, again, as stated earlier in the message, in the statement,
22 trying to explain what just happened.

23 Q. Now, did you find references amongst the materials in the
24 *Inspire* magazine particularly that make reference to the same
25 concept?

1 A. Yes.

2 MR. CHAKRAVARTY: Go to 1142-89, page 57.

3 MR. BRUCK: I don't think that's the way it's supposed
4 to be displayed.

5 THE COURT: If you can take down the unredacted...

6 BY MR. CHAKRAVARTY:

7 Q. Can you read that, please?

8 A. "America is a terrorist state and Americans are complacent
9 in some of the worst forms of terrorism our Muslim nation has
06:38 10 been subjected to. Millions of Muslim lives has been lost to
11 American brutality. It is about time Muslims wake up and pay
12 back America what is due to it."

13 "In this section, the OSJ" -- so that's Open Source
14 Jihad -- "we give our readers suggestions often how to wage
15 their individual jihad. Here is one idea of how an individual
16 Muslim may do so. It is a simple idea and there is not much
17 involved in its preparation. All what is needed is the
18 willingness to give one's life for Allah."

19 Q. There are several other passages like this throughout the
06:39 20 *Inspire* magazines particularly that demonstrate enmity towards
21 America?

22 A. Yes.

23 MR. CHAKRAVARTY: Go back to the note, please.

24 And, Mr. Bruemmer, you can take that down.

25 Q. Can you please keep reading?

1 A. "As a M..." and then a bullet hole, presumably Muslim.
2 "As a Muslim I can't stand to see such evil go unpunished. We
3 Muslims are one body. You hurt one, you hurt us all. Well, at
4 least that's how Muhammad, peace be upon him, wanted it to
5 be..." bullet hole "...ever," presumably "however, the ummah is
6 beginning to rise..." presumably "awaken." There's a bullet
7 hole.

8 Q. And before we move on to the next page to finish that
9 clause, this notion of "we Muslims are one body," is that that
06:40 10 concept of ummah?

11 A. That and more, yes.

12 Q. When you say "more," what do you mean?

13 A. It's not just the idea of a single ummah, a single Muslim
14 nation, it's the idea that it is if you hurt one Muslim in any
15 part of the world, it's incumbent upon a Muslim -- it's a
16 personal obligation upon a practicing Muslim elsewhere in the
17 world to do something about it. It's not like if Muslims in
18 Chechnya or Palestine or Iraq are being hurt but you're being
19 treated well here in the United States, you're okay here. You
06:40 20 still need to do something because we are all one body. You
21 hurt one of us, you hurt all of us.

22 Q. And just before it says "I can't stand to see such evil go
23 unpunished," is punishing a theme throughout these materials?

24 A. Yes.

25 MR. CHAKRAVARTY: Can we go to 1142-79? Page 33,

1 please.

2 Q. And is this a statement by Anwar al-Awlaki?

3 A. Yes.

4 MR. CHAKRAVARTY: Page 34, please.

5 Q. Can you read that?

6 A. "The declaration goes on to claim that we may not
7 terrorize those who enjoy safety and security. To throw out
8 such a blanket statement that we are not allowed to terrorize
9 those who enjoy safety and security in light of the present
06:41 10 state of the world is another reckless statement. According to
11 these scholars, we the Muslims are not allowed to terrorize the
12 Israelis or the Americans or the British who are living in
13 safety and security while millions of Muslims are being
14 terrorized by them. We are told to never mind the insecurity
15 of the Palestinian or the Chechen or the Kashmiri. Never mind
16 them. We are simply not allowed to terrorize..."

17 MR. CHAKRAVARTY: Next page, please.

18 A. "...period. No. We do not agree with that. We do not
19 agree with that because Allah says" -- and then there's a quote
06:42 20 from the scripture. Would you like me to read it or not?

21 Q. No, thank you.

22 A. After the quote from the scripture it says, "We say that
23 whoever terrorizes us, we will terrorize them and we will do
24 what we can to strip them of their safety and security as long
25 as they do us the same."

1 Q. Were there other passages like this throughout the *Inspire*
2 magazine particularly?

3 A. Yes.

4 Q. The idea of Muslims are one body, you hurt one, you hurt
5 us all, was that evident in "Join the Caravan" as well?

6 A. Yes.

7 MR. CHAKRAVARTY: Go to 1142-36 at page 23.

8 Q. Can you read that?

9 A. Yeah, with difficulty. I'm not as young as I once was.

06:43 10 (Laughter.)

11 Q. How about if I read it and you tell me?

12 A. I got you.

13 Q. Okay.

14 A. I'm not willing to give in quite yet.

15 "The jurists have documented that the lands of the Muslims
16 are like a single land, so that whichever region of the
17 Muslims' territory is exposed to danger, it is necessary that
18 the whole body of the Islamic ummah rally together to protect
19 this organ which is exposed to the onslaught of the microbe.

06:44 20 What is the matter with the scholars, that they do not arouse
21 the youths for jihad, especially since arousal is compulsory."

22 Q. And is this that notion that if you hurt one, you hurt us
23 all?

24 A. That and the compulsory nature of this standing up and
25 defending the ummah.

1 Q. We'd finished this page, with "The ummah is beginning to
2 rise/awake."

3 MR. CHAKRAVARTY: Can we go to the next page?

4 Q. Please keep reading from the new portion.

5 A. "How Muhammad, peace be upon him, wanted it to be..."
6 bullet hole "...ever," presumably "however, the ummah is
7 beginning to rise awa..." bullet hole, presumably "awake, has
8 awoken the mujahidin. Know you are fighting men who look into
9 the barrel of your gun and see heaven. Now how can you compete
06:45 10 with that? We are promised victory and we will surely get it."

11 Q. And just before we move on, this idea of awakening the
12 mujahidin, is that a theme that you saw throughout the
13 materials?

14 A. It is.

15 MR. CHAKRAVARTY: Go to 1142-89, page 35.

16 Q. And read this portion. I'm sorry. Can you read this
17 portion?

18 A. "We must also awaken in the hearts of the ummah the spirit
19 of resistance and jihad; confrontation of aggression,
06:46 20 oppression and tyranny; firmness on the truth; and rejection of
21 the culture of concession and methodology of backtracking,
22 which has led some to abandon the government of the Sharia and
23 concede four-fifths of Palestine.

24 Q. Now going back to the note, the writing in the
25 boat -- sorry.

1 MR. CHAKRAVARTY: Mr. Bruemmer, can you go back to
2 page 3?

3 Q. The next phrase is, "Know you are fighting men who can
4 look into the barrel of your gun and see heaven." Are you
5 familiar with that concept?

6 A. I am.

7 Q. What is it?

8 A. Again, this is the idea of not fearing death, looking into
9 the barrel of the gun and seeing heaven, seeing the
06:47 10 opportunity. Again, presumably if having done for the right
11 reasons, being able to go to heaven, maybe even the highest
12 levels of heaven. It's articulating to this Western audience
13 that how can you compete with that? How can you fight people
14 who aren't afraid to die for their cause?

15 Q. Read the next line, please?

16 A. "We are promised victory and we will surely get it."

17 Q. Now, this concept of victory, an assured victory, is that
18 a theme throughout these materials?

19 A. It is.

06:47 20 MR. CHAKRAVARTY: Go to 1142-91, page 57.

21 Q. This is that first issue of *Inspire* magazine?

22 A. It is.

23 Q. Can you read that?

24 A. "It is true that we are facing the arsenal of the greatest
25 army on earth with our simple modest means, but victory is on

1 our side. Victory is on our side because there is a difference
2 between us and you. We are fighting for a noble cause. We are
3 fighting for God and you are..."

4 MR. CHAKRAVARTY: Next page, please.

5 A. "...fighting for worldly gain. We are fighting for
6 justice because we are defending ourselves and our families and
7 you are fighting for imperialistic goals. We are fighting for
8 truth and justice and you are fighting for oppression. You
9 have your B-52's, your Apaches, your Abrams and your cruise
06:48 10 missiles, and we have small arms and simple improvised
11 explosive devices, but we have men who are dedicated and
12 sincere, with hearts of lions."

13 MR. CHAKRAVARTY: Your Honor, I still have a little
14 bit more to go and it's four o'clock.

15 THE COURT: Let me see you at the side first.

16 (Discussion at sidebar and out of the hearing of the
17 jury:)

18 THE COURT: Is he staying?

19 MR. CHAKRAVARTY: Once we got to lunch we realized
06:49 20 he's not going to make it.

21 THE COURT: Okay. How much more?

22 MR. CHAKRAVARTY: Ten, 15 minutes.

23 THE COURT: How much time do you have?

24 MR. BRUCK: 10, 15 minutes. No more than a half hour.
25 I would hate to be overtime with an expert with a jury.

1 THE COURT: Fair enough.

2 (In open court:)

3 THE COURT: Okay. We will pause here. There is more
4 to go but we have reached the four o'clock hour. We'll
5 adjourn. Remember my instructions, obey them, and we will see
6 you tomorrow and finish with the testimony.

7 Enjoy the evening.

8 THE CLERK: All rise for the Court and the jury. The
9 Court will be in recess.

06:50 10 (The Court and jury exit the courtroom and the
11 proceedings adjourned at 4:00 p.m.)

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C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, and Cheryl Dahlstrom, RMR, CRR, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

/s/ Cheryl Dahlstrom
CHERYL DAHLSTROM, RMR, CRR
Official Court Reporter

Date: 10/13/15